Supreme Court, U.S.
FILED

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No. 95 1460 MAR 1 2 1996

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In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED STATES OF AMERICA, APPELLANT

v.

DAVIDA JOHNSON, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the district court's congressional districting plan for the State of Georgia contains a greater deviation from the constitutional one-person, one-vote requirement than is necessary or justifiable.

2. Whether the district court's congressional districting plan for the State of Georgia deprives African-Americans of an equal opportunity to participate in the electoral process and elect candidates of their choice, and thereby violates Section 2 of the Voting Rights Act.

3. Whether the district court's congressional districting plan for the State of Georgia departs from state districting policies to a greater extent than necessary to cure the constitutional violations in the State's plan, in contravention of this Court's decision in *Upham* v. *Seamon*, 456 U.S. 37 (1982).

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the plaintiffs below were Pam Burke, Henry Zittrouer, George L. DeLoach, George Seaton, James Rhodes, Gary Heard, Daniel Morrel, and Donald Shirah. The defendants below were Zell Miller, Governor of Georgia, Pierre Howard, Lieutenant Governor of Georgia, Thomas Murphy, Speaker of the House of Representatives of Georgia, and Max Cleland, Secretary of the State of Georgia. Max Cleland has been succeeded as Secretary of State by Lewis Massey. Intervenor-defendants were Lucious Abrams, Jr., Rev. G.L. Avery, William Gary Chambers, Sr., and Karen Watson.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The remedial order and opinion of the three-judge district court (App., *infra*, 1a-29a) is not yet reported. The three-judge court's earlier opinion with regard to the Second District (App., *infra*, 30a-38a) is also not yet reported. This Court's prior opinion in this case is reported at 115 S. Ct. 2475. The three-judge court's original liability opinion is reported at 864 F. Supp. 1354.

JURISDICTION

The judgment of the three-judge district court was entered on December 13, 1995. The United States filed a notice of appeal on January 12, 1996 (App., *infra*, 47a-48a). The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

STATUTORY PROVISION INVOLVED

Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

STATEMENT

In *Miller* v. *Johnson*, 115 S. Ct. 2475, 2490 (1995), this Court held that the Eleventh District in Georgia's congressional redistricting plan violated the Equal Protection Clause because "[r]ace was the predominant, overriding factor explaining the [Georgia] General Assembly's decision to attach to the Eleventh District various appendages containing dense majority-black populations," and because that use of race was not "narrowly tailored to achieve a compelling interest." On remand, the three-judge district court held that the Second District in Georgia's plan—also a majority-minority district—was similarly unconstitutional. After the legislature was unable to enact a new plan, the district court devised its own remedial plan. This appeal seeks summary reversal of

that plan on the ground that it violates constitutional one-person, one-vote requirements, Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the requirement that a court-imposed redistricting plan depart as little as possible from the State's redistricting policies, see *Upham* v. *Seamon*, 456 U.S. 37 (1982).

1. The 1990 census entitled the State of Georgia to an additional—eleventh—congressional district. Prior to that census, African-Americans, although 27% of Georgia's population, constituted a majority of the voting age population (VAP) in only one of Georgia's ten congressional districts—the Fifth District, located in the Atlanta area. See *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In 1991 and early 1992, the Georgia legislature successively enacted two redistricting plans. Each of them contained two majority African-American districts: the Fifth District, in the Atlanta area, and the Eleventh District, extending eastward from the DeKalb County suburbs of Atlanta. The Department of Justice interposed objections to both plans under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

In 1992, the state legislature enacted a plan containing three congressional districts in which African Americans constituted a VAP majority. See *Miller* v. *Johnson*, 115 S. Ct. 2475, 2482-2484 (1995). That plan received preclearance, but the Eleventh District was found unconstitutional by a three-judge district court. *Johnson* v. *Miller*, 864 F. Supp. 1354 (S.D. Ga. 1994).

This Court affirmed. The Court held that the district court had correctly subjected the Eleventh District to strict scrutiny because race had been the "the predominant, overriding factor" in the drawing of the Eleventh District. 115 S. Ct. at 2490. The Court found that the State's plan "subordinated traditional race-neutral districting principles * * * to racial objectives." *Id.* at 2488. The Court noted that the plan's extension of the Eleventh District to Savannah was occasioned entirely by the desire

to place African-American population in the City of Macon (Bibb County) in the Second District, *id.* at 2489, and that many counties and precincts were split for the sole purpose of increasing the Eleventh District's black population, *ibid.*

Applying strict scrutiny, the Court concluded that the State's use of race in drawing the plan was not justified by the objective of complying with Section 5 of the Voting Rights Act. The Court held that there was "no reasonable basis to believe that Georgia's earlier enacted [two majority-minority district] plans violated § 5," because they were not retrogressive and because "[t]he State's policy of adhering to other districting principles instead of creating as many majority-minority districts as possible does not support an inference" of discriminatory purpose under Section 5. 115 S. Ct. at 2492.

2. On remand, the district court permitted the plaintiffs to add parties and amend their complaint to challenge the Second Congressional District (the other new majority-minority district that had been created by the State in 1992). App., *infra*, 1a-2a. The district court refused, however, to allow any Georgia voters to intervene in defense of the Second District. On October 30, 1995, the district court held a hearing on the constitutionality of the Second District. On December 1, 1995, the district court issued an order holding the Second District unconstitutional, for essentially the same reasons that this Court had held the Eleventh District unconstitutional. App., *infra*, 30a-38a.

3. After this Court's remand order, the district court offered the legislature an opportunity to formulate a new districting plan, but the legislature was unable to do so. Each chamber of the state legislature passed a different plan and, on September 13, 1995, the legislature notified the court that it was unable to redraw the map. App., *infra*, 2a.

4. In October, 1955, the district court issued two orders. The first (R. 325: Order of October 18, 1995) called

upon the parties to submit remedial plans that corrected the faults of the unconstitutional plan while making the fewest changes in it. The second order asked the parties to file remedial plans "that comport[] with Georgia's historical districting principles, Constitutional requirements, and the Voting Rights Act." R. 329: Order of October 20, 1995. The second order requested the parties not to base their proposals on the plan that had been ruled unconstitutional, but rather upon the first plan Georgia had enacted in 1991—a plan containing two majority-minority districts.

The plans offered to the district court during the remand proceedings fell into two general categories. In one category were four plans submitted by the Abrams Intervenors, one submitted by Congressmen John Lewis and Newt Gingrich, and one passed by the State House. See R. 296, 318, 319, 344, and 347, and Abrams' Intervenors' Exh. 37. Those plans each contained at least two districts with African-American VAP majorities: the Fifth, in the Atlanta area, and the Eleventh.[1] In each plan, the Eleventh District had between 50%-53% black VAP. In all but one, the Eleventh District was located in the same east-central part of Georgia as the Eleventh District in the State's three 1991 and 1992 plans, but with counties reunited and the extension to Savannah removed. Of this group of plans, the Abrams Plan A (R. 296 and 319) had the lowest overall population deviation[2] (0.29), while the plan passed by the state House (Abrams' Intervenors' Exh. 37) had the highest overall deviation (1.92).

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[1] One of the plans, which was known as the Abrams Plan A (R. 296 and 319), had three African-American majority VAP districts.

[2] We use the term "overall population deviation" to mean the difference, expressed as a percentage of the population of an ideally apportioned district, between the populations of the district with the largest population and the district with the smallest population.

In the second category were the plaintiffs' proposed plans and the plan that had been passed by the State Senate. R. 342, 367, 258, and 295. In each of them, only the Fifth District in the Atlanta area had an African-American VAP majority. None of these plans contained another congressional district in which the African-American VAP was greater than 40%. The range of overall population deviations for these plans was from 0.52 (for Remedy 4X and Remedy 4XR, see R. 367, Exhs. B and D) to 1.78 (for Remedy 4, see R. 342). After a hearing on October 31, the district court ordered plaintiffs' counsel to revise one of the plaintiffs' plans (Remedy 4X) in order to reduce the overall population deviation and to submit that plan for comment. The court called upon the parties to submit their comments by November 22. R. 363.

On November 22, the United States submitted a brief (R. 348), acompanied by an "Illustrative Plan," arguing that the plaintiffs' proposed Remedy 4X did not meet the requisite standards of population equality, made more changes than necessary to cure the constitutional violation, and violated the Voting Rights Act by including only one majority-minority district. The Illustrative Plan was intended to illustrate that a plan could be drawn with two compact majority-minority districts and minimal population deviations. It splits only two counties outside the metropolitan Atlanta area. Its overall population deviation of 0.19% was the lowest overall population deviation of any plan before the district court. The plan includes two compact majority African-American districts—the Fifth and the Eleventh. A map of the Illustrative Plan and demographic data for the district appear at App., *infra*, 44a-45a.[3]

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[3] The maps of the district court's plan, App., *infra*, 42a, the Illustrative Plan, App., *infra*, 44a, and the first plan the state adopted after the 1990 census, App., *infra*, 46a, were reproduced on computers at the Department of Justice so that the colors and legends on the maps would be uniform.

5. On December 13, 1995, the three-judge district court adopted the plan from which this appeal is taken. That plan, a map of which appears at App., *infra*, 41a, closely resembles the plan (Remedy 4XR) that the plaintiffs submitted in response to the court's order following the October 31 hearing. It has an overall population deviation of 0.35%. It includes only one majority-minority district (the Fifth), which contains a 57% African-American VAP. App., *infra*, 6a, 25a. See also App., *infra*, 43a (demographic data for court's plan). The court ordered the State to adhere to that plan "until the legislature convenes to change it * * * following the millenium census, or before." App., *infra*, 28a-29a.

a. The district court recognized that, "[i]n fashioning a remedy in redistricting cases, courts are generally limited to correcting only those unconstitutional aspects of a state's plan," because such a "minimum change plan acts as a surrogate for the intent of the state's legislative body." App., *infra*, 2a-3a (citing *Upham* v. *Seamon*, 456 U.S. 37 (1982)). The court held, however, that "Georgia's current plan was tainted by unconstitutional [Department of Justice] interference," App., *infra*, 4a, and that the court therefore "c[ould] not use Georgia's current plan as a surrogate for the legislature's reapportionment policies and goals." App., *infra*, 5a. The court also stated that "any remedy even minimally disruptive to the current plan would necesarily have resulted in drastic changes" because the two districts that had been declared unconstitutional were "on opposite sides of the state," and "it is a virtual impossibility to change less than we have." App., *infra*, 6a.

With respect to the goal of population equality, the court noted that "federal courts are held to stricter standards than legislatures," and that the court therefore was "particularly constrained to create a remedy with the lowest population deviation practicable." App., *infra*, 7a. The court stated that only the Illustrative Plan submitted

by the Department of Justice had a lower overall deviation than the plan the court adopted, App., *infra*, 8a-9a & n.4,[4] but the court rejected that plan because it "split numerous counties outside of the metropolitan Atlanta area, apparently for racial reasons." App., *infra*, 8a n.4. The Illustrative Plan in fact split only two counties outside the Atlanta area. See App., *infra*, 44a (map).

The court conceded that "there is some [population] deviation resulting from our adherence to Georgia's traditional districting principles and unique factors." App., *infra*, 8a. The court identified those factors as the State's "strong historical preference for not splitting counties outside of the metropolitan Atlanta area," *ibid.*; see also App., *infra*, 15a-16a, and the "maintenance of district cores and communities of interest," App., *infra*, 10a; see also App., *infra*, 17a-18a. The court acknowledged that "Georgia has historically sought to draw district lines so incumbents remain in their districts in a new plan and to avoid placing two incumbents in the same district." App., *infra*, 18a; see also App., *infra*, 14a n.10. The court stated, however, that, although it "considered this factor," it "subordinated it to the other considerations" because "it is inherently more political than factors such as communities of interest and compactness." App., *infra*, 18a. Accordingly, the court's plan places two incumbents—the African-American Members of Congress from the former Eleventh and Second Districts—in districts with other incumbents, and it moves the incumbent from the former Eighth District into the Second District. App., *infra*, 21a.

b. The court also discussed the application of the Voting Rights Act to its plan, noting that "[d]uring the remedy phase of the hearing, a significant portion of the

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[4] This statement was incorrect; in addition to the Illustrative Plan, two other plans submitted by the Abrams Intervenors had lower overall deviations (0.29 and 0.34) than the court's plan. See R. 269 and 319.

argument centered on whether the Court's remedy would be required by Section 2 to contain two majority-minority districts." App., *infra*, 19a. In order to find that a districting plan violates Section 2, a court must conclude that the minority population is sufficiently compact and numerous to form a district, that the minority group is politically cohesive, and that whites voting as a bloc usually defeat the candidate of choice of minority voters. See *Thornburg* v. *Gingles*, 478 U.S. 30, 50-51 (1986). The latter two factors are referred to collectively as the presence of "legally significant racially polarized voting." The court concluded that Section 2 does not require a second majority-minority district in Georgia "due primarily to the geographic dispersion of [Georgia's] minority population and lack of any significant vote polarization." App., *infra*, 20a.

With respect to compactness and numerosity, the court noted that, "[i]f Georgia had a concentrated minority population large enough to create a second majority-minority district without subverting traditional districting principles, the Court would have included one since Georgia's legislature probably would have done so." App., *infra*, 21a n.16. Regarding polarization, the court repeated the assertion it had made in its earlier decision in this case that, "while some degree of vote polarization exists, it is 'not in alarming quantities.' " App., *infra*, 23a (quoting 864 F. Supp. at 1390). Nonetheless, the court held that Section 2 "does require maintenance of the Fifth District as a majority-minority district," App., *infra*, 24a-25a, and that "maintaining the percentage of black registered voters [in the Fifth District] as close to fifty-five percent as possible was necessary, in our view, to avoid dilution of the Fifth District minorities' rights." App., *infra*, 25a-26a.

c. Judge Edmondson noted his dissent, but did not file an opinion. App., *infra*, 29a.

THE QUESTIONS RAISED ARE SUBSTANTIAL

The United States seeks summary reversal of the district court's order imposing upon the State of Georgia a congressional redistricting plan that reduces from three to one the number of majority-minority districts. The plan, which purports to remedy the constitutional defects found in the 1992 plan, violates the Constitution, the Voting Rights Act, and other limitations on court-ordered redistricting. Specifically, the court's redistricting plan violates the one-person, one-vote requirement of Article I, § 2 of the Constitution and the mandate of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, of equal opportunity for minority voters to participate in the political process and elect representatives of their choice. It also violates the rule set forth in *Upham* v. *Seamon*, 456 U.S. 37 (1982), by making more changes in the existing plan than are necessary to correct that plan's constitutional defects; most importantly, the court's plan disregards the State's policy of having at least two majority-minority districts—a policy embodied in all three districting plans enacted by the Georgia legislature since the 1990 census.

The district court's errors are clear. Prompt reversal is warranted in order to ensure that the 1996 Georgia congressional elections are not conducted under a malapportioned districting plan that violates Section 2 of the Voting Rights Act. The existence of plans, such as the Illustrative Plan submitted by the United States, that contain two majority-minority districts, that comply with state districting policies, and that contain minimum population deviations shows that, on remand, the district court can quickly adopt a plan that satisfies constitutional and statutory requirements.

1. The district court clearly erred in adopting a plan that deviates from the principle of population equality more than is necessary or justifiable. Article I of the Constitution requires that congressional districts achieve population equality "as nearly as is practicable." *Wesberry*

v. *Sanders*, 376 U.S. 1, 7-8 (1964). This requirement is close to an absolute standard. *Kirkpatrick* v. *Preisler*, 394 U.S. 526, 527-528 (1969). When a state legislature draws congressional districts, "the command of Art. I, § 2 as regards the National Legislature outweighs the local interests that a State may deem relevant in apportioning districts for [state legislative] representatives." *Karcher* v. *Daggett*, 462 U.S. 725, 732-733 (1983).

Where a state legislature draws congressional districts, a minimal deviation from absolute population equality may be justified by consistently applied state legislative policies, such as "making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." *Karcher*, 462 U.S. at 740. But, as the district court correctly noted, App., *infra*, 7a, the standard for court-ordered districting plans is a stricter one. *Connor* v. *Finch*, 431 U.S. 407, 413-414 (1977); *Chapman* v. *Meier*, 420 U.S. 1, 26-27 (1975). Because redistricting is " 'primarily a matter for legislative consideration and determination,' * * * a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality." *Connor*, 431 U.S. at 414-415 (quoting *Reynolds* v. *Sims*, 377 U.S. 533, 586 (1964)). Courts, on the other hand, have no mandate "to compromise sometimes conflicting state apportionment policies in the people's name." *Connor*, 431 U.S. at 415.

The district court's plan contravenes the principle of population equality. The largest overall population deviation in the court's plan is 0.35%, between the Third District (which deviates by +0.12% from absolute population equality) and the Second District (which deviates by −0.23%). App., *infra*, 43a. In contrast, the largest overall population deviation in the Illustrative Plan, submitted by the Department of Justice, is 0.19%—between the

Tenth District (which deviates by +0.09%) and the Eleventh District (which deviates by −0.10%). *Id.* at 45a. That difference in overall deviations is sufficient to have required the district court to adopt the Illustrative Plan (or some other plan with an equal or smaller overall deviation), unless there is a compelling justification for its failure to do so.

In a footnote, the court justified its decision to adopt a plan with a greater population deviation than that in the Illustrative Plan on the ground that the Illustrative Plan "split numerous counties outside of the metropolitan Atlanta area, apparently for racial reasons." App., *infra*, 8a n.4.[5] That justification is clearly erroneous. The Illustrative Plan splits two counties outside the Atlanta area; both divisions are explicable on non-racial grounds and both are consistent with traditional districting principles.

The Illustrative Plan splits Muscogee County in southwestern Georgia, in which part of Fort Benning is located, between the Second and Third Districts. Those districts are the two with the highest deviations (−0.23% and +0.12%) in the court's plan, adding up to an overall deviation of 0.35%. By splitting Muscogee County, the Illustrative Plan dramatically lowered the deviation from population equality of the two districts; the deviation between the two districts in the Illustrative Plan is, respectively, 0.01% and 0.02%. In splitting Muscogee County,

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[5] In that footnote, the court also stated that "[w]hether the DOJ should be involved in this, the map-generation phase of the redistricting process is questionable," apparently because "[n]ormally, Georgia would originate a plan for DOJ preclearance under [Voting Rights Act] Section 5." App., *infra*, 8a n.4. There is no reason why the Department of Justice should not be permitted to introduce plans in a redistricting case in order to provide bases for analysis under Section 2 and constitutional one-person, one-vote requirements. Indeed, submission of such a plan is ordinarily essential in order to make out the preconditions for a Section 2 "results" case under *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). In any event, the district court accepted the submission of the DOJ plan and considered it on its merits.

the Illustrative Plan also keeps all of Fort Benning—which is located in Muscogee and Chattahoochee Counties—in the Second District. The State's first post-1990 plan also kept Fort Benning in one district by splitting a county (in that plan, Chattahoochee County). See App., *infra*, 46a (map). The court's plan keeps Muscogee and Chattahoochee Counties intact, but it splits Fort Benning between the Second and Third Districts. The Illustrative Plan is thus more consistent with the State's own preferences in this area of the State than the Court's plan, results in a very much smaller population deviation, and is completely explicable on non-racial grounds (the desire to keep Fort Benning in a single district).

The Illustrative Plan also splits Bibb County, in the center of the State, among the Third, Eighth, and Eleventh Districts. The deviation in those districts under the court's plan is +0.12%, −0.17%, and +0.08%, respectively. App., *infra*, 43a. Under the Illustrative Plan, the deviation in those three districts is +0.03%, +0.05%, and −0.10%. *Id.* at 45a. The Illustrative Plan thus reduces the deviation very substantially in two of the districts and increases it only very slightly in the third.[6] In addition, each of Georgia's three post-1990 plans also split Bibb County. The Illustrative Plan thus follows state policies in this respect as well.

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[6] The population deviation of 0.19% between the Tenth and Eleventh Districts in the Illustrative Plan could be decreased with some minor changes in the Atlanta area or in Bibb County. In the course of the proceedings below, the United States endorsed plans that contained two majority-minority districts having overall population deviations larger than that in the court's plan. For example, we told the court in October that two such plans appeared to "comply with the United States Constitution and the Voting Rights Act," Unied States' Brief on Remedy, R. 348, at 1-2, and we again endorsed those plans for their balancing of race and traditional districting criteria at the October 30-31 hearing. Tr. 414, 421-422. There was testimony, however, that with minor changes, the population deviations in those plans could be made much smaller. Tr. 301-303 (Selwyn Carter).

Keeping county boundaries intact cannot be an absolute goal in the redistricting process. See, *e.g.*, *Kirkpatrick* v. *Preisler*, 394 U.S. 526, 533-534 (1969) ("[W]e do not find legally acceptable the argument that variances are justified if they necessarily result from a State's attempt to avoid fragmenting political subdivisions by drawing congressional district lines along existing county, municipal, or other political subdivision boundaries."); *Wells* v. *Rockefeller*, 394 U.S. 542, 546 (1969) (same); *White* v. *Weiser*, 412 U.S. 783, 791 (1973) (same).[7] The sanctity of county boundaries is particularly questionable in Georgia. The three-judge court took judicial notice at an earlier stage of this case that "until 1962 the county unit system was used to undermine the voting strength of counties with large black populations." App., *infra*, 40a. The county unit system was also employed to avoid one-person, one-vote requirements. See also *Wesberry* v. *Sanders*, 376 U.S. 1 (1964). The State of Georgia has split counties outside the Atlanta area for purposes of congressional redistricting in the past; in the 1970s, Whitfield County was divided in a highly irregular pattern between two congressional districts. See 94-631 J.A. 79. The State does not "consistently appl[y]," *Karcher* v. *Daggett*, 462 U.S. at 740, a policy of keeping counties intact throughout the State; as the three-judge court itself found, Georgia's "preference" against splitting counties has not applied at all to the Atlanta area since the county unit system was struck down. App., *infra*, 8a-10a. Both the 1972 and 1982 districting plans split counties in the Atlanta area, and the three-judge court's own

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[7] Both *Chapman* v. *Meier*, 420 U.S. 1 (1975), and *Connor* v. *Finch*, 431 U.S. 407 (1977), dealt with court-ordered state legislative plans, not congressional redistricting. Accordingly, the district court incorrectly relied on *Connor*, see App., *infra*, 9a, to justify rigid adherence to the asserted state policies against splitting counties outside the Atlanta area.

plan splits six counties in the immediate area of Atlanta. App., *infra*, 15a.[8]

2. The district court's plan violates Section 2 of the Voting Rights Act. The Illustrative Plan demonstrates that the African-American population in Georgia is sufficiently large and compact—employing the State's own traditional districting criteria—to form a second majority-minority district, located in the east central area of the State. Voting is racially polarized in that area, as shown by evidence in this case and confirmed by the evidence upon which the district court based its own finding that Section 2 requires drawing a majority-minority district in the Atlanta area. The totality of the circumstances—including the fact that Georgia's African-American population constitutes 27% of its population and that the court's plan has only one majority-black district out of eleven (9%)—demonstrates that African-Americans will not have an equal opportunity to participate in the electoral process and to elect candidates of their choice under the court's plan. We do not contend that a majority-minority district must be drawn wherever it is possible to do so. The district court's failure to draw such a district in this case, however, violated the substantive standards of Section 2. It therefore must be reversed.

a. *Compactness/Numerosity.* According to the district court, a second majority-minority district cannot be drawn in Georgia "due primarily to the geographic dispersion of its minority population." App., *infra*, 20a. That is clearly incorrect.[9]

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[8] Although the court stated that it split those counties "for population density reasons," App., *infra*, 15a, it later retreated to the more modest claim that "it would be impossible to avoid splitting any counties," *id.* at 18a n.12.

[9] The district court made the same finding in its earlier decision in this case. See 864 F. Supp. at 1390. That finding was not affirmed on appeal because this Court had no occasion to consider whether Section 2 required the creation of two majority African-American districts in Georgia.

The African-American population in east central Georgia is sufficiently large to create a second district. The Eleventh District in the Illustrative Plan is located in that area. Its population is 54.60% African-American, and its VAP is 51.04% African-American. The district has a population deviation of only 0.10%. See App., *infra*, 45a.

The Eleventh District in the Illustrative Plan is also compact. It is contiguous and its boundaries are regular. See J.A. 44a (map). The most appropriate measure of compactness of a district is the extent to which the district comports with the State's traditional districting practices. *Jeffers* v. *Clinton*, 730 F. Supp. 196, 207 (E.D. Ark. 1989), aff'd mem., 498 U.S. 1019 (1991); *Houston* v. *Lafayette County*, 56 F.3d 606 (5th Cir. 1995). The Eleventh District in the Illustrative Plan comports with those practices, as identified by the district court.

The district court stated that maintaining counties intact outside the Atlanta area was a traditional practice in Georgia. See App., *infra*, 14a-15a; but see pp. 14-15, *supra*. The Eleventh District in the Illustrative Plan divides only one county outside the Atlanta area, and the Illustrative Plan as a whole divides only one additional county outside the Atlanta area. See pp. 12-13, *supra*.[10]

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[10] The district court correctly noted that, although its own plan splits precincts in some places, App., *infra*, 9a n.6, Georgia generally seeks to avoid splitting precincts. App., *infra*, 9a. The Illustrative Plan was built on census tracts, not precincts, and the United States did not have data on Georgia's precincts in its mapping program. Precinct lines throughout the State change frequently. Therefore, the precise number of precincts that are split in the Illustrative Plan is uncertain. However, since the plan as a whole splits only two counties outside the Atlanta area and since precinct lines follow county lines, it is extremely doubtful that the plan splits an inordinate number of precincts, and the plan could certainly be refined not to do so. The plaintiffs-appellees' unsupported contention that "[t]he DOJ plan * * * split[s] hundreds of precincts," thereby rendering it "without any value," is without foundation. See Appellees' Brief In Opposition To Application To

The district court also identified maintaining the cores of existing districts and keeping the State's four "corner districts" intact as traditional state practices. App., *infra*, 16a-17a, 17a-18a. The Illustrative Plan recognizes the cores of the existing districts and maintains the same three corner districts as does the court's plan. See *id.* at 44a (map).[11]

The Eleventh District in the Illustrative Plan does not suffer from the defects in the district that this Court found unconstitutional in *Miller* v. *Johnson*. The Illustrative Plan's Eleventh District does not incorporate the Athens-Augusta strip that the district court found was "historically" located in the Tenth District, see App., *infra*, 14a, nor does it contain any part of the southeastern coastal district, as did the district that this Court found unconstitutional in *Miller*, see *id.* at 19a. As the Illustrative Plan therefore shows, the African-American population in DeKalb County and central Georgia is "sufficiently large and geographically compact to constitute a majority" in a congressional district, *Thornburg* v. *Gingles*, 478 U.S. at 50, without subordinating "Georgia's traditional districting policies," "constitutional norms," or "common sense," App., *infra*, 21a.

Justice Kennedy, Circuit Judge, For A Stay and/or Injunction Pending Appeal 8 & n.7.

[11] The district court observed that its plan "maintains ninety-five counties (totally or partially) in the same districts as they were located in the 1982 plan—significant given the addition of the Eleventh District." App., *infra*, 10a. However, under the same measure, the Illustrative Plan fares better; it maintains 101 counties totally or partially within the same districts as in the 1982 Plan. Similarly, when compared to the plan the Georgia Assembly first passed in 1991—prior to any objection from the United States Attorney General—the Illustrative Plan maintains 138 of Georgia's 159 counties totally or partially in the same districts while the district court's plan keeps only 123 counties in the same districts. Compare 94-631 J.A. 80 with App., *infra*, 44a (map).

b. *Racially Polarized Voting.* The evidence in the record in this case established the existence of legally significant racially polarized voting. The district court, however, at one point referred to what it termed the "lack of any significant vote polarization." App., *infra*, 20a. The court also stated that "some degree of [racial] vote polarization [in Georgia] exists" but "not in alarming quantities," and that "[t]he second and third *Gingles* preconditions therefore would not be met in a Section 2 challenge to the [court's] remedy." App., *infra*, 23a (quoting 864 F. Supp. at 1390). To the extent those statements are read as factual findings that racially polarized voting in Georgia—and, in particular, in the east central portion of the State—does not satisfy the second and third *Gingles* preconditions, they are clearly erroneous.

The district court appeared to base its statements regarding racially polarized voting on the findings it made at the earlier stage of this case. At that time, the court found that 22% to 38% of white people in the area of the 1992 Eleventh District (which substantially overlaps the area of the Eleventh District in the Illustrative Plan) would vote for African-American candidates, while 20% to 23% of African-Americans in the area would vote for white candidates. 864 F. Supp. at 1390.

Those findings (which, incidentally, substantially overstate the degree of white crossover voting [12]) are sufficient

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[12] Experts for the United States and plaintiffs found that white crossover voting ranged from 0% to 27%, and that black crossover voting ranged from 3% to 11% in the most relevant elections. U.S. Exh. 24, tables 1 & 3; PX 82, Attachment E. The court's higher crossover figures included consideration of judicial elections involving an appointed black incumbent and elections in which there were multiple black candidates and a white candidate. Both kinds of elections are substantially less probative of racially polarized voting than ordinary elections between one black and one white candidate. See 5 T. Tr. 203-204, 228 (testimony of Allan Lichtman). See also *Thornburg* v. *Gingles*, 478 U.S. 30, 57 (1986); *Collins* v. *City of Norfolk*, 883 F.2d 1232, 1243 (4th Cir. 1989), cert. denied, 498 U.S. 938 (1990). The plaintiffs' expert, Dr. Weber,

to demonstrate the existence of legally significant racially polarized voting in the district court's plan, especially in the area in which the Illustrative Plan's Eleventh District is located. The court's plan contains three districts—the Fourth, the Tenth, and the Eleventh—that each contain parts of the area covered by the Eleventh District in the Illustrative Plan. Of those three districts, the Tenth District has the largest African-American VAP—approximately 34%. Calculating white crossover voting at 30% and black crossover voting at 22%—the midpoints of the ranges found by the district court—a black candidate would be unable to win election in the court's Tenth District.[13] The same result would follow even more clearly in the court's Fourth and Eleventh districts, which

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testified that judicial elections do not provide a good indication of voting patterns in congressional elections (4 T. Tr. 318) and that, if the judicial incumbent elections were removed from his own calculation, the white crossover vote would drop to 26.6%. 4 T. Tr. 324-325. If the elections involving multiple black candidates were removed, he testified that the white crossover calculation would drop to 17%. 4 T. Tr. 325.

[13] The figure for black political cohesion is the inverse of the figure for black crossover voting. Under the assumption stated in the text of 22% black crossover voting, the figure for black political cohesion is 78% (100%-22%). The vote for the minority-preferred candidate can be derived by multiplying the black VAP (34%) by the figure for black political cohesion (78%), and then adding the white VAP (66%) multiplied by the percentage of white crossover voting (30%). Under the assumptions in the text, and assuming also that turnout rates for the two races are identical, the black-preferred candidate would receive 46% of the vote (and the white-preferred candidate would receive 54%) in the court's Tenth District. If black crossover voting remained at approximately 22%, the white crossover vote would have to be approximately 36%—or at the very top of the range found by the district court—in order for a black-preferred candidate to win. If the consistenly lower black turnout rates found by the district court are factored in, see 864 F. Supp. at 1392, the white crossover vote would have to be still higher for a minority-preferred candidate to win.

have African-American VAPs of 33% and 11%, respectively. Voting polarization will thus prevent African-American voters in this area of the State from electing candidates of choice under the district court's plan. The Illustrative Plan's Eleventh District would remedy this discrimination.

At trial, the parties stipulated to the facts that, with one exception, all of the African-American state legislators in Georgia were elected in districts that were majority African-American and that all but one of the 181 majority-white state legislative districts were represented by white legislators. See 94-631 J.A. 26-27 (¶¶ 61-64). Those facts support the conclusion that Georgia suffers from racially polarized voting, resulting in the usual defeat of minority-preferred candidates in majority-white election districts.

The expert testimony reached the same conclusion. The United States' expert, Dr. Lichtman, found that white crossover voting ranged from 0% to 27%. See note 12, *supra*. The plaintiffs' expert, Dr. Weber, corroborated the results found by Dr. Lichtman with respect to the levels of polarization in the area of the Eleventh District. PX 82, at 22-24 & Attachment E. In each instance, however, he found the results lacking in significance because, despite the polarization, the African-American candidates won within the borders of the 60% majority VAP African-American 1992 Eleventh District. *Id.* at 24-27. Far from casting doubt on the degree of racially polarized voting, this testimony supported the showing that must be made to establish a Section 2 claim: that candidates of choice of African-Americans in the area of the 1992 Eleventh District can win majorities only if African-Americans form a majority of the constituency.

The district court's apparent findings of lack of significant racial polarization also directly conflict with its Section 2 findings regarding the Atlanta area. The court found that "Section 2 * * * does require maintenance of the Fifth [Atlanta] District as a majority-minority dis-

trict." App., *infra*, 24a-25a. The court found that polarization there was sufficiently serious that "maintaining the percentage of black registered voters as close to fifty-five percent as possible was necessary, in our view, to avoid dilution of the Fifth District minorities' rights." *Id.* at 25a-26a. Those findings cannot be squared with the court's statements regarding a supposed *lack* of racial polarization in the Eleventh District.

In making its findings regarding the Fifth District, the court relied exclusively on the analysis prepared by Dr. Katz, the State's expert, at the original trial. App., *infra*, 25a; see also 864 F. Supp. at 1390, 1391-1392. Dr. Katz analyzed a large group of Georgia election results and determined the racial composition of the registered electorate in each case. From those data, he calculated the probability of a black candidate winning an election in Georgia as a function of the percentage of blacks in the relevant electorate. Katz Report, DX 170, at 18-21; 5 T. Tr. 49-50, 62-71. He concluded that the probability of a black candidate winning an election in Georgia does not go above 50% until the percentage of registered voters who are black reaches approximately 50%. 5 T. Tr. 84-85.

Dr. Katz's study supports—and thus tends to corroborate—the conclusion that African-Americans can win elections in Georgia only when they are in the majority in the constituency.[14] Moreover, the study is based on statewide data. The study contained no evidence that polarization might differ in the areas of the Fifth and Eleventh Districts. If the study demonstrates that there was racially polarized voting in the area of the Fifth Dis-

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[14] Dr. Katz's study does not directly address the question whether legally significant racially polarized voting exists, since it does not make "discrete inquiries into minority and white voting practices." *Gingles*, 478 U.S. at 56. In addition, Dr. Katz's "statistics are based on statewide figures." App., *infra*, 26a n.18. It is doubtful that exclusive reliance on such statewide figures would be appropriate in a district-specific Section 2 challenge. 478 U.S. at 59 n.28.

trict, it therefore also demonstrates that there is similar racially polarized voting in the east-central area of the State, where the Illustrative Plan's Eleventh District is located. The court's contrary conclusions with regard to the two areas are therefore internally inconsistent.

c. All the other factors that contribute to a "totality of circumstances" analysis establish that the district court's failure to draw a second majority-black district in central Georgia violates Section 2. The district court's finding that Section 2 requires creation of a majority-black district in the Atlanta area confirms that conclusion.

The history of racial discrimination in voting in Georgia has been spelled out in prior decisions, and the district court took judicial notice of that history in the initial proceedings in this litigation. See App., *infra*, 39a-40a. From the time of Georgia's first constitution, which barred blacks from voting as a matter of law, Georgia has employed a variety of devices to destroy or dilute black voting strength. The State has employed literacy tests, white primaries, and the county-unit system. The State has also used districting as a way of discriminating against African-American citizens. *Ibid.* From Reconstruction until the 1980s, black voters were not in the majority in any of the State's congressional districts. In 1982, the District Court for the District of Columbia found that the State of Georgia had acted with a discriminatory purpose in adopting a congressional redistricting plan that failed to include a district in the Atlanta area whose registered voters were majority African-American. See *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983).

At the original trial, the parties stipulated to Georgia's history of past discrimination. See Joint Statement of Undisputed Facts, ¶¶ 76-98, 99-101, 104-134. Among the consequences of that history are continuing and significant socioeconomic disparities between black persons in Georgia, as a group, and white persons as a group. See 94-631 J.A. 29-33 (¶¶ 135-155). Those differences re-

sult in African-Americans having a smaller economic base on which to draw to mount political campaigns. In addition, the evidence showed that African-Americans have lower registration and turnout rates than whites. See U.S. Exh. 24, at 19, 21-23. The political handicaps suffered by blacks in majority-white political districts are aggravated by the large geographical area covered by Georgia's congressional districts and by Georgia's requirements that those who do not win a majority vote in a primary face runoff elections. See *Thornburg* v. *Gingles*, 478 U.S. 30, 45 (1986). Finally, the district court's plan, with only one majority-black district, would leave black voters substantially underrepresented in the State's congressional districting plan, while creating two majority-minority districts out of eleven (18%) would not overrepresent blacks, who constitute 27% of the State's population. See *Johnson* v. *DeGrandy*, 114 S. Ct. 2647, 2662-2663 (1994).

3. The discussion in Part 2(a) above demonstrates as well that the district court departed unduly from the State's own districting policies, in contravention of *Upham* v. *Seamon*, 456 U.S. 37 (1982). In that case, the Court observed that "[w]henever a district court is faced with entering [a] reapportionment order, * * * it is faced with the problem of reconciling the requirements of the Constitution with the goals of state political policy." *Id.* at 43 (internal quotation marks omitted). That reconciliation "can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." *Ibid.* As the district court stated in this case, "[i]n fashioning a remedy in redistricting cases, courts are generally limited to correcting only those unconstitutional aspects of a state's plan." App., *infra*, 2a.

The district court recognized that state legislative policy dictated the creation of two majority-minority districts, insofar as that could be accomplished within constitutional and statutory limits and without unduly departing from

other traditional districting principles. The court stated that "[i]f Georgia had a concentrated minority population large enough to create a second majority-minority district without subverting traditional districting principles, the Court would have included one since Georgia's legislature probably would have done so." [15] App., *infra*, 21a n.16.

The Illustrative Plan shows that, using that test, the district court should have adopted a plan with two majority-minority districts. It demonstrates that a plan could have been drawn that comports with Georgia's traditional geographic districting practices and that creates two compact majority-minority districts.[16] Indeed, the

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[15] The court correctly assessed the state legislative policy in this area. The first plan that the State adopted in 1991, prior to either of the Section 5 objections that were lodged by the Department of Justice, provides a useful guide to the State's districting principles. Although the district court stated that the 1991 Plan "contained many of the same features in its Eleventh District that found their way into the unconstitutional Eleventh," App., *infra*, 13a n.9, the court did not find that the 1991 Plan was itself unconstitutional or the product of any unconstitutional motive. The 1991 Plan included two majority-minority districts, one of which (the Eleventh) was located in the same general area of the State and based on the same DeKalb County to Bibb County axis as the Eleventh District in the Illustrative Plan. Compare App., *infra*, 46a (1991 Plan) with App., *infra*, 44a (Illustrative Plan). The State eventually drew the district in a way that led to its being found unconstitutional. *Id.* at 13a n.9. That does not negate the fact that, from the start, it was part of the State's redistricting policy to draw two majority-minority congressional districts in Georgia, including one in the area of the Eleventh District.

[16] The district court's rejection of the State's decision to draw a majority-black, urban/suburban Eleventh Congressional District stretching southeast from metropolitan Atlanta in favor of a majority-white, urban/suburban district stretching east from metropolitan Atlanta is particularly troubling, because it treats the State's efforts to create a majority-black district "*less* favorably than similar efforts on behalf of other groups." See *Miller* v. *Johnson*, 115 S. Ct. at 2497 (O'Connor, J., concurring).

Illustrative Plan would better comport with the State's "historic[]" policy of protecting incumbents, App., *infra*, 18a; see also *id.* at 14a, than does the Court's plan, which pits incumbents against each other in two districts and moves an additional incumbent to a different district, see p. 8, *supra*. Unlike the Court's plan; the Illustrative Plan leaves all incumbents in the districts they currently represent. See United States' Reponse to Plaintiffs' Plans Remedy 4X and 4X-R, R. 369 at 10 (filed Nov. 21, 1995). Nor does the Illustrative Plan suffer from the defects that this Court found in *Miller* v. *Johnson*; it does not take race into account as the "predominant, overriding factor," *Miller*, 115 S. Ct. at 2490, that "subordinated traditional race-neutral districting principles," *id.* at 2488, or substantially disregard "customary and traditional districting practices," *id.* at 2497 (O'Connor, J., concurring). There was therefore no basis for the district court to disregard the state legislature's choices.

The district court's error is substantially similar to the error committed by the district court in *White* v. *Weiser*, 412 U.S. 783 (1973). In that case, two remedial plans were presented to the district court. The court selected the one that had a higher overall population deviation and departed more from the malapportioned plan that the State had adopted, but that split fewer counties. See 412 U.S. at 795-796, 797 n.16. This Court reversed that decision, finding that the court should have adopted the plan with a lower population deviation that "most clearly approximated the reapportionment plan of the state legislature, while satisfying constitutional requirements." *Id.* at 796. In *Upham* v. *Seamon*, 456 U.S. 37, 41-42 (1982), the Court relied on that result to reverse summarily a district court's adoption of a remedial plan that disregarded state policy more than necessary to cure the constitutional violation. The same disposition is warranted here.

4. As described above, the district court's plan violates the constitutional one-person, one-vote requirement, Section 2 of the Voting Rights Act, and the requirement that a court-ordered districting plan depart as little as possible from the State's legitimate districting choices. Although Georgia has not, since the 1990 census, enacted a congressional districting plan with only one majority-minority district, the district court has adopted such a plan, despite the demonstration to it that a plan with two compact majority-minority districts could have been adopted, and that such a plan could have smaller population deviations than the court's plan.

If the court's plan is allowed to go into effect, it will cause irreparable injury to residents of overpopulated districts in general, and to African-American voters in particular; both groups will be underrepresented for the next two years. In addition, a severe burden would be imposed on Georgia's electorate as a whole if the 1996 elections are held under a plan that is likely to be found invalid and consequently replaced with another new plan—the third since 1990—in 1998.

As we have shown above, the outlines of a legally valid plan containing two compact majority-minority districts and minimum population deviations are reasonably clear. The case should be remanded to the district court with instructions to adopt such a plan. Although candidate qualification would have to be rescheduled,[17] we are confident that, if the Court acts promptly and the district court acts thereafter "with a compelling awareness of the need for * * * expeditious accomplishment," *Connor* v. *Finch*, 431 U.S. 407, 426 (1977), an acceptable plan can be put into place with minimal disruption to this year's election schedule.

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[17] Candidate qualification is scheduled for April 22-26, 1996, the first-round primary elections are scheduled for July 16, and run-off elections are scheduled for August 6.

CONCLUSION

This Court should summarily reverse the district court's order and remand the case to the district court with instructions to develop and put in place a new plan that is consistent with constitutional one-person, one-vote requirements and that contains two compact majority-minority districts. In the alternative, this Court should note probable jurisdiction and set the case for full briefing and argument.

Respectfully submitted.

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MARCH 1996

APPENDIX A

[Filed Dec. 18, 1995]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CV 194-008

DAVIDA JOHNSON; PAM BURKE;
HENRY ZITTROUER; GEORGE L. DELOACH;
and GEORGE SEATON, PLAINTIFFS

v.

ZELL MILLER, in his official capacity as Governor
of the State of Georgia; ET AL., DEFENDANTS

Before EDMONDSON, Circuit Judge; EDENFIELD, Chief Judge; and BOWEN, District Judge.

ORDER

This Court's September 12, 1994, Order declared Georgia's Eleventh Congressional District unconstitutional. *Johnson v. Miller*, 864 F. Supp. 1354 (S.D. Ga. 1994) ("*Johnson* I"). The Supreme Court affirmed our decision in *Miller v. Johnson*, —— U.S. ——, 132 L.Ed.2d 762 (1995) ("*Johnson* II"). In accordance with the Supreme Court's affirmance, we held a hearing on August 22, 1995, to determine the

best means of resolving the issue of remedy. Plaintiffs moved for leave to add residents of Georgia's Second Congressional District in a constitutional challenge thereto. The Court granted that motion, held a trial, and declared the Second District unconstitutional. *Johnson v. Miller*, —— F. Supp. —— (S.D. Ga. 1995) ("*Johnson* III").[1]

As to the remedy, we deferred to Georgia's legislature, allowing it an opportunity to draw a new congressional map in accordance with the Supreme Court's holding and this Court's prior findings. *Growe v. Emison*, —— U.S. ——, 122 L.Ed.2d 388 (1993). Time obviously was of the essence in light of the rapidly approaching 1996 congressional elections and the more imminent 1996 congressional campaigns. However, the legislature notified the Court on September 13, 1995, that it was unable to redraw the map and had adjourned, effectively leaving the task to us. *See* "Notice of Def. Murphy with Respect to Legislative Adjournment." We are therefore forced to redraw Georgia's congressional districting plan.

I. Scope of Remedy

In fashioning a remedy in redistricting cases, courts are generally limited to correcting only those unconstitutional aspects of a state's plan. *Upham v. Seamon*, 456 U.S. 37 (1982). The rationale for such a "minimum change" remedy is the recognition that redistricting is an inherently political task for which

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[1] All page references to *Johnson* III are to the manuscript Order on file with the Clerk's office. All references to transcripts from the Eleventh District trial will be "Eleventh Trl. Trans.," and reference to the Second District trial will be "Second Trl. Trans."

federal courts are ill-suited. *Id.* at 41-42. A minimum change plan acts as a surrogate for the intent of the state's legislative body. *See Id.* at 43 (district court must reconcile Constitutional requirements with goals of state policy); *White v. Weiser*, 412 U.S. 783, 795 (1973) ("district court should . . . honor state policies in the context of congressional reapportionment").

In *Upham*, the Texas legislature had passed a congressional districting plan and submitted it to the U.S. Department of Justice ("DOJ") for preclearance. While the plan was with the DOJ, a case was filed in district court challenging the plan's constitutionality under the Voting Rights Act ("VRA"). The U.S. Attorney General also objected to the plan, specifically objecting to two of the plan's twenty-seven districts. The three judge panel determined that the two districts were unconstitutional, and devised a plan of its own. The court's plan redrew the two objectionable districts and two adjoining districts. However, in doing so, the Court substituted its own judgment for the Texas legislature's and redrew districts in Dallas County in addition to the two objectionable south Texas districts. Reasoning that the legislatively-drawn districts would have failed retrogression analysis, the court redrew the Dallas County districts under the stricter standard applicable to courts. Thus, the court ignored the legislature's preferences.

Reversing, the Supreme Court held that the district court erred in redrawing the Dallas County districts absent an objection to those by the attorney general or a specific finding that they were unconstitutional. The Court stated that a "district court's modifications of a state plan [should be] limited to

those necessary to cure any constitutional or statutory defect." *Upham*, 456 U.S. at 43. And, "'[i]n fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor intrude upon state policy any more than necessary.'" *Id.* at 42 (quoting *Weiser*, 412 U.S. at 794-95). The Court had no objection to the district court's correction of the two objectionable districts or the two adjoining districts that were necessarily impacted as a result thereof.

At first glance it appears that, in remedying Georgia's constitutionally infirm congressional districting plan, we are faced with the same task as the *Upham* court, which would entail making only those changes necessary to bring the current plan into constitutional compliance. However, this Court's remedial task differs from that of the *Upham* court's because Georgia's current plan was not the product of Georgia's legislative will. Rather, the process producing Georgia's current plan was tainted by unconstitutional DOJ interference. *See Johnson* I, 864 F. Supp. at 1367-68. By virtue of its unconstitutional origin, Georgia's current congressional plan cannot form the basis for the remedy we now construct because it does not represent the goals of Georgia's historic policies nor the state legislature's true intent.

A. Department of Justice's Interference

Central to this Court's finding that the Second and Eleventh Districts are unconstitutional was the DOJ's level of involvement in the creation of the current plan. The DOJ used informants inside the legislature to keep tabs on the legislature's progress. *Id.* at 1367. It worked closely with the ACLU to help the ACLU

achieve its objective of three majority-minority districts in Georgia. *Id.* at 1362-63 (finding, among other things, that the "DOJ was more accessible and amenable to the opinions of the ACLU than to those of the Attorney General of the State of Georgia"). The DOJ rejected Georgia's first two plans even though they clearly did not violate Section 5 of the Voting Rights Act. *Johnson* II, 132 L.Ed.2d at 784. The DOJ basically used the preclearance process to force Georgia to adopt the ACLU redistricting plan and, in the process, subvert its own legislative preferences to those of the DOJ. The product of the process, the unconstitutional plan, more closely reflects the DOJ's and ACLU's intentions than the Georgia General Assembly's. *Johnson I*, 864 F. Supp. at 1367 (finding the precleared plan "bore all the signs of DOJ's involvement"). Using the current plan as a basis for the remedy would, in effect, validate the DOJ's constitutionally objectionable actions. Thus, we cannot use Georgia's current plan as a surrogate for the legislature's reapportionment policies and goals. *See Johnson* II, 132 L.Ed.2d at 782 (Georgia's . . . redistricting *plan* cannot be upheld unless it satisfies strict scrutiny," which the Court found it did not) (emphasis added); *Johnson* I, 864 F. Supp. at 1393 (finding "[i]n sum, the current districting *plan* is not reasonably necessary to comply with Sections 2 or 5 of the VRA. Since no compelling state interest other than VRA compliance is evident, the *plan* fails strict scrutiny under the Fourteenth Amendment") (emphasis added).

Because the current plan does not represent the Georgia legislature's intent, we are not bound by *Upham* to make only minimal changes to the current

plan in fashioning a remedy.[2] Finally, since two of Georgia's districts are unconstitutional, are on opposite sides of the state, and contain all or parts of nearly a third of Georgia's counties, any remedy even minimally disruptive to the current plan would necessarily have resulted in drastic changes.[3] Considering the objective that each congressional district should ideally contain 588,929 persons, it is a virtual impossibility to change less than we have.

B. Remedy

Because we are unable to use Georgia's current plan as the basis for a remedy, we were compelled to devise our own plan. The remedy we devised and now order into effect is attached to this order as Appendix A, with the verbal census block description attached as Appendix B. The plan contains one majority-minority district, has an overall population deviation of .35%, and an average deviation of .11%. The plan and how we devised it we further explain below.

II. Remedial Factors

Since the Court is not limited to Georgia's current unconstitutional plan, the Court's task is akin to those cases in which states had no plans. Thus, when devising the remedy, the Court was bound by

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[2] This does not mean that we ignored the current plan altogether, only that our consideration of it was tempered by its origins.

[3] The DOJ's demand for three majority-minority districts resulted in land bridges, splitting numerous counties outside of metropolitan Atlanta predominantly for racial reasons, and splitting 70 voting precincts for the same reasons. *Johnson* I, at 1367; *Johnson* III, at 6.

the stricter guidelines applicable to court plans. These guidelines include the one person-one vote requirement and the state's traditional districting principles.

A. One Person, One Vote

The Equal Protection clause of the Constitution requires "no less than substantially equal . . . representation for all citizens, of all places as well as of all races." *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). In adhering to this principle of one person-one vote, the Supreme Court has allowed legislatures only the narrowest of margins in population deviations when drawing congressional districts. *See Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964) (requiring congressional districts to be "as nearly as is practicable" to one person-one vote); *Karcher v. Daggett*, 462 U.S. 725, 732-33 (1983) ("absolute population equality [is] the paramount objective" in congressional apportionment). Since federal courts are held to stricter standards than legislatures in redistricting, *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978), we were particularly constrained to create a remedy with the lowest population deviation practicable.

Our remedy's population deviation is not perfect. The Supreme Court's mandate that courts follow a state's historical legislative districting principles sometimes conflicts with the one person-one vote requirement. Where such tensions existed, we sought to defer to one person-one vote without decimating the historical character of Georgia's congressional plan. The resultant remedy contains a lower deviation than the current Georgia plan, the 1982 plan, and any other plan presented to the Court which was not

otherwise constitutionally defective.[4] Nevertheless, there is some deviation resulting from our adherence to Georgia's traditional districting principles and unique factors, some of which we pause to reconcile here, the remainder of which we discuss in Part II (B) *infra*.

Georgia's strong historical preference for not splitting counties outside of the metropolitan Atlanta area, as well as other unique factors, account for some of our plan's deviation. *See Connor v. Finch*, 431 U.S. 407, 419-20 (1977) (in court plan reapportioning state legislature, court is required to enunciate historically significant state policy or unique features that result in deviation from ideal district size); *Weiser*, 412 U.S. at 795 (1973) ("District Court should . . . honor state policies in the context of congressional reapportionment").

Georgia has preferred to split counties only in the Atlanta area where division was necessary because of Atlanta's dense population relative to other areas of the state. We did rearrange precincts in the Atlanta area for purposes of achieving better deviations.[5] Of

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[4] The DOJ presented a plan containing a slightly lower overall deviation than the Court's plan. However, its plan split numerous counties outside of the metropolitan Atlanta area, apparently for racial reasons. Whether the DOJ should be involved in this, the map-generation phase of the redistricting process is questionable. Normally, Georgia would originate a plan for DOJ preclearance under VRA Section 5. Regrettably, we are standing in the state's shoes, and our plan is not subject to Section 5 in any event.

[5] The Court was able to achieve such low deviations by placing Talbot County in the Third District, thereby reducing the Second District's deviation to —.23%. This also allowed a transfer of population from the Third District to the under-

course, we attempted to avoid splitting voting precincts (with the exception of Cobb and Clayton Counties)[6] due to Georgia's preference against that practice.[7] The unconstitutional plan splits twenty-

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populated Fifth District. The Fifth District does extend into Dekalb County somewhat, an extension necessary to allow other precincts in the Atlanta area to be relocated in order to achieve vastly improved deviation, and also keep the City of Atlanta wholly within the Fifth District. The Court's splitting of Dekalb and other Atlanta area counties is consistent with the Georgia General Assembly's decision to split those counties due to the heavy population concentrations in that region of the state.

[6] A look at a map of the City of Marietta and Cobb County reveals that every plan drawn at any level (county commission, state house, state senate, and congressional) must of necessity split some precincts in the Marietta-Cobb County area because of an annexation pattern that created noncontiguous enclaves and exclaves. There are pieces of the city that are islands in the county and vice versa. Def. Exh. 92.

In Clayton County, two precincts were split along already existing school board or county commission lines, and a third was split along a major geographical feature. These enabled the Court to achieve lower deviations in the Third and Fifth Districts without causing the problems discussed in footnote seven, *infra*.

[7] As we have noted:

> [O]ne bad side effect of the splitting of units as small as precincts for racial purposes occurs when the precinct is divided in one way for a state house seat, another way for a state senate seat, and yet a different way for a congressional seat. When this kind of gerrymandering is repeated often enough, the voting combinations are so rare . . . that a secret ballot becomes difficult for some voters.

Johnson III at 6 n.3; Second Trl. Trans. at 28. The Court believes the same result could obtain from splitting precincts

eight precincts in the Second District alone (seventy overall), all predominantly for racial reasons. *Johnson* III, at 6. The product of the Court's efforts is a lower overall deviation than Georgia's 1982 and 1992 plans.

However, maintaining political subdivisions (counties) cannot alone justify less than perfect deviation in a court plan. *Cf. Karcher*, 462 U.S. at 740 ("we are willing to defer to state legislative policies, so long as they are consistent with constitutional norms, even if they require small differences in the population of congressional districts"); *Weiser*, 412 U.S. 783 (1973) (mandating strict adherence to legislative policies). We therefore considered splitting counties outside of the Atlanta area, but other factors unique to Georgia militated against it.

Other factors causing the slight deviation include maintenance of core districts and communities of interest. Georgia has historically preferred to maintain the core of each district during reapportionment. *Cf.* 1972 Plan, Def. Exh. 14, and 1982 Plan, Pl. Exh. 41, Def. Exh. 15. Our remedy maintains ninety-five counties (totally or partially) in the same districts as they were located in the 1982 plan—significant given the addition of the Eleventh District, which in the remedy contains thirteen counties.

Maintaining county boundaries also helps to ensure that communities of interest are maintained within the same district. Residents of a particular county are similarly affected by the decisions of their elected representatives. People who share communities of

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for any reason, not only racial. Thus, except in one instance, the Court avoided splitting precincts unless they were split in the same manner at other election levels, and then only where absolutely necessary. The new split precinct has its boundaries along easily identified major roadways.

interest logically belong within the same congressional district. *See Johnson* II, 132 L.Ed.2d at 782 (discussing significance of communities of interest).

Incidentally, a factor unique to Georgia, and one which enables a draftsman to reach near perfect deviations without splitting counties, is the number of Georgia counties: 159. Most of the counties are more sparsely populated than the Atlanta area counties. With such a high number of counties, we were able to achieve extremely low deviations without splitting non-Atlanta area counties. *Cf. Mahan v. Howell*, 410 U.S. 315, 321 (1973) (allowing states to "use political subdivision lines to a greater extent in establishing state legislative districts" because of the greater number of state legislative districts to be apportioned as compared to the lesser number of congressional districts), *modified* 411 U.S. 922 (1973).[8] As we have noted:

> With the exception of Texas, Georgia has more counties than any other state in the Union; one would think that such a proliferation would provide ample building blocks for acceptable voting districts without chopping any of those blocks in half.

Johnson I, 864 F. Supp. at 1377.

In the calculus of district population deviation, our only measure of the state's demographics is the decennial census. Since the population is not static, we

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[8] The correspondingly high number of counties in Georgia afforded the Court the same opportunity to maintain county boundaries (outside of metropolitan Atlanta counties) among the eleven congressional districts.

adhered to the fiction that the census block figures are accurate to the exclusion of all others. In 1995, no precise count of a district's population can be made using 1990 data. We are halfway through the decade. Changes have occurred in Georgia. *See, e.g.*, footnote 17, *infra*. In sum, using the available data and whole counties outside of the Atlanta area, our remedy is probably as close to "zero deviation" as one can be. At this point in the decade, the deviation effort is largely theoretical. The real data, known only to providence, would doubtlessly lead us to another result.

Yet, we remain sensitive to the extant deviation, so we now explain the other factors we were compelled to consider.

B. Adherence to Georgia's Historic Districting Preferences

1. Source of Georgia Legislature's Intentions

Since redistricting is an inherently political process, federal courts undertaking the task must adhere to the state's historical districting preferences and traditions. *Upham*, 456 U.S. at 39; *Weiser*, 412 U.S. at 795. The problem facing the Court was that, unlike the situation in *Upham*, Georgia's current plan does not represent the political will of Georgia's citizens. *See* Part I, *supra*. The issue then became where we should look to divine Georgia's true political will. Given the unique events of Georgia's 1992 redistricting process, the Court has a better understanding of what the legislature might have done had it not been for the DOJ's subversion of the redistricting process.

We drew upon Georgia's 1972 plan and 1982 plan, as well as the first plan enacted in 1992,[9] to determine how the legislature typically maintains district cores from one plan to another. Our first hurdle was where to locate the new Eleventh District. Since significant population growth is occurring in the Atlanta area, it follows that the new district would be created where future growth is anticipated. Carving the new district where growth is projected allowed us to include fewer counties within the district, consequently enabling us to better maintain district cores.

We placed the new Eleventh District in the Northeast Atlanta corridor out to the northeast Georgia state line. The Eleventh district now contains counties which are becoming more urban with the population growth, notably Walton County and Newton County. Eleventh Trl. Trans. III at 26. The Eleventh also contains the Athens-Clarke County area which has become a metropolitan area in its own right, and locating it in the Eleventh is consistent with the new Eleventh's urban/suburban flavor. *Id.*

The resulting Eleventh District is a relatively compact grouping of counties which follow a suburban to rural progression and have Interstate Eighty-Five as a very real connecting cable. The road net, the area's commerce, its recreational aspect, and other features produce a district with a palpable commu-

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[9] The first 1992 plan gave us a clearer understanding of legislative intent, but it was not a perfect guide since it contained many of the same features in its Eleventh District that found their way into the unconstitutional Eleventh—connecting the south Dekalb County urban minority population with the primarily rural east Georgia minority population.

nity of interests. As a "radius" district reaching from suburban Atlanta to the state line, the new Eleventh has an analogous resemblance to the Third, Seventh, and Ninth Districts.

Georgia's Tenth District has historically been located in the east-central portion of the state, with Augusta as its main hub. Eleventh Trl. Trans. III at 26; 1940 Plan, Jt. Exh. 16; 1972 plan. Addition of the Eleventh precipitated a shift in the Tenth District south, but the Tenth retains Augusta as its main hub and retains its primary rural character. The Court began here, and the remainder of the remedy fell into place along the lines of Georgia's historic plans, maintaining district cores where possible.

2. Georgia's Traditional Districting Factors

While Georgia's legislature considers many factors in the apportionment process, there are a few factors that have historically guided the legislature in the process more so than others and which are evident in the plans it has historically enacted.[10] These factors, all of which have heavily influenced past apportionment plans in Georgia, are the primary factors that guided our development of this

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[10] Other factors the legislature has considered include avoiding contests between incumbents, drawing districts to include certain state political officers, and drawing districts so as to avoid having certain state officers represented by members of the opposite political party. Eleventh Trl. Trans. III at 21. Because these were not predominant factors the state has considered in the past, they were given less weight since they are inherently more political in nature than the more objective factors.

remedy. We explore some of them below, and we note that consideration of them was tempered by the one person-one vote principle.

a. Maintaining Political Subdivisions

The Georgia General Assembly has strongly adhered to the principle of maintaining counties wihin the same congressional district. Georgia did not split a county until 1972, when it was necessary to do so because of the dense population in the metropolitan Atlanta area. *See* 1972 Map. The 1982 plan only split three counties, again in the Atlanta area for population density reasons.[11] Eleventh Trl. Trans. III at 36. Likewise, our remedy splits only six counties, all within the Atlanta area, and all split for population density reasons.[12] In comparison, the current unconstitutional plan split twenty-three counties, seventeen of which were split for no reason other than race.

Maintaining Dekalb County entirely within one district was a feature of several plans submitted to the Court. However, we chose to split Dekalb, removing a few voting precincts from the Fourth District and placing them in the Fifth District in order to achieve near perfect deviations in those Districts.[13]

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[11] As noted above, the large number of counties in Georgia affords a draftsman much flexibility in achieving near perfect deviation numbers while maintaining county boundary lines.

[12] Evidence showed that the significant population growth in Georgia is occurring in the metropolitan Atlanta area. Given the population density of those counties, it would be impossible to avoid splitting any counties.

[13] Since Dekalb County is a densely populated county in the Atlanta area, splitting it is acceptable under the one person-

The other reasons for doing this were: 1) the Georgia legislature has already made the political decision to split Dekalb for population density reasons, first in 1982, and again in each of the three plans presented to the DOJ for preclearance in 1992; 2) the result was an increase in the Fifth District's minority voting age population from fifty-three percent to fifty-seven percent, an increase most likely required by the VRA;[14] and 3) the City of Atlanta, a significant political subdivision in its own right, is encompassed completely by the Fifth District.

b. Four "Corner Districts"

Georgia historically has maintained four "corner districts" in its Congressional plans. Eleventh Trl. Trans. III at 23-27. The four "corner" districts include: 1) the southeastern coastal district, comprising the coastal counties and the other counties most closely related to them; 2) an agrarian district in southwest Georgia, prominent for its peanut production; 3) the northwestern corner, known for its carpet production and isolated from the northeast Georgia counties by mountains; and 4) the northeastern corner, identified by its preeminent position in poultry production. Maintaining these districts is consistent with the community of interest factor approved by

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one vote principle. The legislature split it in the past to comply with that principle.

[14] *See* Part II(B)(2)(f)(1)(iii) (discussing the importance of maintaining black percentage of registered voters as close to fifty-five percent as possible). With the exception of four Dekalb precincts moved to the Fifth District, the rest of the Dekalb precincts were part of the Fifth in the 1982 plan and remain in the Fifth under our plan.

the Supreme Court. *Johnson* II, at 782. Our remedy adheres to all of these objectives with the exception of the northeast corner district, a necessary consequence of adding an eleventh district and the shift in counties that it precipitated.

c. Urban Minority District

In 1972 Georgia created an urban minority district in the Atlanta area to comply with the VRA. This is Georgia's sole majority-minority congressional district. Recognition of the Fifth District as an urban minority district resulted from voting rights litigation in the early seventies. Eleventh Trl. Trans. III at 27. Since race is a factor this Court can *consider*, we considered it insofar as the legislature would have considered it in maintaining one majority-minority district or else run afoul of VRA Sections 2 and 5.

Unlike the unconstitutional Eleventh District, Fifth District residents have a strong community of interest, and the geography of the district itself is compact and meets contiguity requirements. *See* Jt. Exh. 15; Jt. Exh. 1; Remedy, Appendix A. Also, Section 2 of the VRA required the Court to maintain the Fifth District as a majority-minority district. See Part II(B)(2)(f)(1), *infra*.

d. Maintaining District Cores

Georgia's legislature has historically sought to maintain district cores from one plan to another. The 1972, 1982, and the three 1992 plans that passed the legislature evidence this legislative preference. Our remedy bears a striking resemblance to these earlier plans, especially in the rural districts such as the

First, Second, Eighth, and Ninth. *See* Part II(A), *supra* (noting that the remedy maintains ninety-five counties in the same districts as they were located in the 1982 plan, and the new Eleventh District contains thirteen of the remaining counties).

e. Protecting Incumbents

Georgia has historically sought to draw district lines so incumbents remain in their districts in a new plan and to avoid placing two incumbents in the same district. The Court considered this factor, but since it is inherently more political than factors such as communities of interest and compactness, we subordinated it to the other considerations. We note, however, that our remedy places incumbents in the same district in only two districts, while keeping eight incumbents in their present districts. The remedy's Eighth and Eleventh Districts do not currently have incumbents as residents. The incumbent from the former Eighth District resides in the remedy's Second District, and the Eleventh District incumbent resides in the remedy's Fourth District.

f. Voting Rights Act

1. Section 2

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, applies to any "voting qualification or prerequisite to voting or standard, practice, or procedure . . . imposed or applied by any State or political subdivision . . . ." 42 U.S.C. § 1973(a). A plain reading of the statute would lead one to believe that Section 2 does not apply to a court-drawn and ordered redistricting plan. *See Holder v. Hall*, —— U.S. ——;

129 L.Ed.2d 687 (1994) (Thomas, J. Dissenting). However, Section 2 does apply to certain cases in which a federal court orders a redistricting plan into effect. *See United States v. Dallas Cnty. Comm'n*, 850 F.2d 1433 (11th Cir. 1988) (holding that any proposed remedy of a *Section 2* violation must meet Section 2 requirements), *cert. denied*, 490 U.S. 1030 (1989).

During the remedy phase of the hearing, a significant portion of the argument centered on whether the Court's remedy would be required by Section 2 to contain two majority-minority districts. We have considered Section 2 and the case law construing it, and we conclude that two majority-minority districts are not required by Section 2 because including two such districts would violate *Johnson* II's principles.

i) When Section 2 Requires Creation of a Majority-Minority District

States run afoul of Section 2 when they draw district lines which have the "*effect* of denying a protected class the equal opportunity to elect its candidate of choice." *Voinovich v. Quilter*, —— U.S. ——, 122 L.Ed.2d 500, 512 (1993) (emphasis in original). Section 2 mandates that courts look at the totality of the circumstances when determining whether a violation exists. 42 U.S.C. § 1973(b). Plaintiffs establish a Section 2 violation by proving three factors, as first stated in *Thornburg v. Gingles*, 478 U.S. 30 (1986); (1) that the minority group " 'is sufficiently large and geographically compact to constitute a majority in a single-member district;' . . . (2) that the minority group 'is politically cohesive; . . . [and] (3) that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred

candidate.'" *Voinovich*, 122 L.Ed.2d at 513-14 (quoting *Growe*, 122 L.Ed.2d at 403). However, these factors are not to be applied mechanically, *Johnson v. DeGrandy*, —— U.S. ——; 114 S.Ct. 2647, 2655 (1994); *Voinovich*, 122 L.Ed.2d at 514, and while they are the preconditions a plaintiff must first establish to prove a Section 2 violation, they must be considered along with other factors when analyzing a Section 2 claim. *DeGrandy*, 114 S.Ct. at 2657.

ii) Why Section 2 Does Not Require a Second Majority-Minority District in Georgia

Ample evidence has been presented during the two trials to enable the Court to determine that Section 2 does not require creation of a second majority-minority district in Georgia—due primarily to the geographic dispersion of its minority population and lack of any significant vote polarization. Creating a second majority-minority district would also violate the Supreme Court mandate under which we now operate because *Johnson* II held that the VRA cannot be applied to reach an unconstitutional result.

Analysis of a racial map of Georgia reveals that the state's minority population is widely dispersed.[15]

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[15] There are heavy minority concentrations in south Dekalb and Fulton counties, east central Georgia (most of which is in the new Eleventh District), southeast Georgia in the coastal region (all of which are included in the new First District), the southwest corner of Georgia, and a concentration in the west-central portion of the state. Pl. Exhs. 17-23, 36-40. *Cf.* Def. Exh. 17; U.S. Exhs. 8-16. The only way Georgia could draw a majority-minority district in the southwest corner of the state was to use "narrow land bridges . . . and . . . a number of irregular appendages." *Johnson* III, at 6. The

In fashioning a remedy, we considered the possibility of creating a second majority-minority district and concluded that to do so would require us to subordinate Georgia's traditional districting policies and consider race predominantly, to the exclusion of both constitutional norms and common sense. Such a plan would directly contravene the Supreme Court's holding in *Johnson* II—that race cannot predominate in the redistricting context absent a compelling justification for it. 132 L.Ed.2d at 782. Nonracial factors do not support creation of a second majority-minority district largely because Georgia's minority population is not geographically compact. *DeGrandy*, 114 S.Ct. at 2655. Creating a second majority-minority district would require this Court to engage in the unconstitutional racial gerrymandering characteristic of the plan we now replace. Georgians deserve a better fate. "It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that statute . . . to demand the very racial stereotyping the Fourteenth Amendment forbids." *Johnson* II at 787.[16]

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only way Georgia could create a majority-minority district out of the minority concentrations in east-central Georgia was to link that rural minority population, again using land bridges and appendages, to the large urban minority population in south Dekalb County. *See* 1992 Plan. We will not repeat the same mistake.

[16] Georgia could consider race as a predominant factor in redistricting if such a consideration was necessary to meet strict scrutiny. *Johnson* II, 132 L.Ed.2d at 782. We cannot subvert Georgia's traditional districting principles in order to draw a second majority-minority district. If Georgia had a concentrated minority population large enough to create a second majority-minority district without subverting traditional districting principles, the Court would have included one since Georgia's legislature probably would have done so. The VRA does not require proportional representation, how-

Statistical evidence pertaining to statewide voting patterns in Georgia showed a significant degree of crossover voting. *Johnson* I, 864 F. Supp. at 1390.

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ever. *See, e.g., White v. Regester*, 412 U.S. 755, 765-66 (1973); *Whitcomb v. Chavis*, 403 U.S. 124, 148-56 (1971). As the Supreme Court stated in *Shaw v. Reno*:

> The principle of equality is at war with the notion that District A must be represented by a Negro, as it is with the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on. . . . That system, by whatever name it is called, is a divisive force in the community, emphasizing differences between candidates and voters that are irrelevant in the constitutional sense.

125 L.Ed.2d 511, 529 (1993) (quoting Justice Douglas' dissent in *Wright v. Rockefeller*, 376 U.S. 52, 66-67 (1964)).

At the remedy phase of the October, 1995 hearing, the counsel for the Speaker of Georgia's House of Representatives observed that if the Court did include a second majority-minority district, it would be "set in stone." He contended that, since future plans would be measured against the Court's plan for purposes of VRA analysis, Georgia's legislature would be hamstrung to relocate the district elsewhere, or to alter the mix of counties included within the district, for fear of violating the VRA. Counsel for Amicus Curiae agreed, which is significant since the Amicus plan contains two majority-minority districts. *Cf. Johnson* I, 864 F. Supp. at 1386 (noting problems a plan attempting to give minorities proportional representation could present in drafting future plans to satisfy VRA). Since political considerations pervade the redistricting task, the Court feels that any permanent footprint left on Georgia's political landscape, especially one with such dangerous side effects as the Supreme Court has noted, should be left to those elected to make such decisions. In other words, we feel the need to intrude as little as possible in this inherently political territory.

We observed that "[b]lack and black-preferred candidates in Georgia have achieved many electoral victories in local and statewide elections and have received significant—occasionally overwhelming—support from both black and white voters within the Eleventh Congressional District.' *Id.* at 1390-91. During the Second District trial, Linda Meggers stated that election results in that district indicated white crossover voting. Second Trl. Trans. at 438. Indeed, Congressman Sanford Bishop, the black Congressman currently representing the Second District, agreed. *Id.* at 142. There is conflicting evidence on the degree of vote polarization in Georgia. This much is clear: while some degree of vote polarization exists, it is "not in alarming quantities." *Johnson* I, 864 F. Supp. at 1390. The second and third *Gingles* preconditions therefore would not be met in a Section 2 challenge to the remedy. Thus, the remedy we now impose meets the requirements of Section 2 without containing two majority-minority districts.

We note that several districts in the remedy do contain significant minority populations which could influence election results. The 1982 plan contained five districts with a minority population of greater than twenty-five percent, and three with a minority population of greater than thirty-five percent. Our remedy contains six districts with a minority voting age population of greater than twenty-five percent, and two districts, the Fifth and the Second, with a minority voting age population of greater than thirty-five percent, while the remedy's Tenth comes close to that with a minority voting age population of more than thirty-four percent. The remedy's minority percentages per district are comparable to those in

the 1982 plan, even with the addition of the Eleventh District.

While we were required to use the 1990 census numbers in formulating the remedy, we note the demographic trend indicating that Dekalb County's population, which comprises the majority of the remedy's Fourth District, is becoming more heavily minority. This means that the Fourth District has the potential to become a very strong minority influence district or a majority-minority district as Georgia is reapportioned following future censuses, if it is not already.[17]

iii) What Section 2 Does Require

While Section 2 does not require the Court to create a second majority-minority district, it does re-

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[17] In its response to the Court's request for additional demographic information concerning minority population trends in Dekalb County, the State Defendants produced an affidavit of Linda Meggers. Ms. Meggers attests that while in 1990 27.4% of Dekalb County's registered voters were black, that number had increased to 35.7% by 1994. Meggers' 11/21/95 Aff. ¶ 7. She indicated the number could be as high as 39.4% in 1995, but that that number is due to a new voter registration law more than population shifts. *Id.* at ¶¶ 7-9. In any event, while the Court is bound to use 1990 census figures in formulating a remedy, we cannot ignore the strong trends in Dekalb County which indicate the remedy's Fourth District may be a stronger minority influence district than data based on the 1990 census would indicate.

The Abrams Intervenors do not dispute Meggers' figures; they only caution the Court that those figures must be viewed in light of the overall change in percentages for each district because some may have lost minority population. Their warning is duty noted.

quire maintenance of the Fifth District as a majority-minority district. The minority population in the Fifth District is sufficiently compact and, being an urban minority population, has a sufficiently strong community of interest to warrant being a majority-minority district. Compliance with the VRA required creating the Fifth as majority-minority in 1972. Eleventh Trl. Trans. III at 27. As a result of 1982 litigation, the Fifth District was required to have a minority population of sixty-five percent. *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983).

The minority population of sixty-one percent, minority voting age population of fifty-seven percent, and a black registered voter percentage of fifty-four percent in the remedy's Fifth District does not result in a dilution of the rights of that district's minorities. Dr. Katz, the most credible statistical expert at the first trial, identified a "significant majority" minority district as one having fifty-five to sixty percent of black registered voters. *See* Katz Rep. at 22. We endeavored to maintain the black percentage of registered voters in the Fifth District as close to fifty-five percent as possible. Expert testimony at the Eleventh District trial indicated a significant drop in the probability of a black candidate being elected as the black percentage of registered voters declines to fifty percent. Katz Rep. at tab 5. The probability of electing a black candidate is below fifty percent when the percentage of black registered voters equals fifty percent. *Id.* Therefore, maintaining the percentage of black registered voters as close to fifty-five percent as possible was necessary, in our view, to

avoid dilution of the Fifth District minorities' rights.[18]

The minority population of the Fifth District in the 1982 plan was sixty-five percent in order for Georgia to comply with the VRA. *Busbee, supra.* We felt that allowing the minority population to fall below sixty percent might be viewed as dilutive at some level. The minority population in the remedy's Fifth District is just shy of sixty-two percent.[19]

2) Section 5

VRA Section 5 requires certain states which have a history of discriminating against minorities to seek preclearance from the U.S. Attorney General prior to implementing a new districting or apportionment plan. 42 U.S.C. § 1973c. However, [a] decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act." *Connor v. Johnson*, 402 U.S. 690, 691 (1971); *McDaniel v. Sanchez*, 452 U.S. 130, 138 (1981). Thus, this Court is not required to seek the preclearance of the Attorney General prior to implementing its plan. The Court does note that its remedy is not retrogressive to the

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[18] While we noted flaws in these analyses in *Johnson* I, these provide the most probative analyses we have which indicate what might be dilutive in the Fifth District. These statistics are based on statewide figures, though. The Court hesitates to rely on statistical data using percentages of black *registered* voters as its basis since that in essence condones voter apathy.

[19] We believe minority voting age population is the appropriate measure for dilution analysis. We offer minority population percentages strictly for comparison purposes since that is what the *Busbee* court focused on in essentially forcing Georgia to create a Fifth District in 1982 with a minority population of 65%.

rights of minorities when compared to the 1982 plan,[20] and it does not violate Section 5 for the same primary reasons that it does not violate Section 2.

Connor notwithstanding, some court-ordered plans have been subject to Section 5 and its requirements. In *Sanchez*, the Supreme Court held that Section 5's preclearance requirement did apply to a reapportionment plan submitted to a federal court by the legislative body of a jurisdiction covered by Section 5. 452 U.S. at 153.

It could be argued that the Court's remedy is a legislative plan since it resembles some of the legislative plans, including the unconstitutional one. To varying extents we relied upon the three enacted 1992 plans, as well as the 1972 and 1982 plans, to determine how the legislature maintains district cores and communities of interest, so some similarity to those plans is inevitable.

However, the Court's plan is its own. While it may resemble one or more of several plans presented to us, as a member of this Court observed during the remedy phase of the hearings: "There could come a time when even the fertility of Herschel the [reapportionment] computer is exhausted and we have re-

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[20] Debate arose at the August, 1995 hearing and the October, 1995 trial as to whether the current plan or the 1982 plan is the appropriate benchmark for retrogression analysis. Interestingly, the DOJ asserted that the unconstitutional plan should be used, contravening 28 C.F.R. § 51.54(b)(1) which dictates using the last constitutional plan on the ground if the current plan is unconstitutional. Since the Court is in the position of replicating the legislative task as it existed in 1992, the 1982 plan should serve as a guide. Of course, since the Court's plan is not subject to Section 5 preclearance, the point is academic.

ceived a finite number of maps. . . . If we extend that logic we are going to be rubber stamping somebody's plan, but I suspect that what we'll do will be our own unique product." Second Trl. Trans. at 409.

So the remedy we now order is not the product of Georgia's legislature. We of course would have preferred for the legislature to have fulfilled its obligation and formulated a districting plan for Georgia. Alas, none was presented to us.[21] We therefore have formulated our remedy in adherence to constitutional norms and deference to the legislature's historical preferences. Therefore, it is not subject to preclearance under VRA Section 5.

III. Conclusion

The Court has fashioned a plan to remedy Georgia's current, unconstitutional districting plan. In arriving at this remedy, we adhered as closely as possible to the Supreme Court's mandate in *Johnson II*, the principle of one person-one vote, and Georgia's traditional legislative goals and traditions. Adopting a remedy that would be truly minimally disruptive to Georgia's current plan was not an option. No plan of congressional redistricting created by court or legislature will achieve perfection. There are too many practical, political, and altogether human features in the equation. We do no harm with this plan, which cures the unconstitutionality of the former and can serve in "caretaker" status until the legislature con-

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[21] Some members of the General Assembly did present plans to the Court, but none purported to be the actual product of the General Assembly. Nevertheless we considered them along with the other plans presented to us during this process.

venes to change it. That may occur following the millennium census, or before.

Noting again the reluctance with which the task was undertaken, it is hereby ORDERED and DECREED that henceforth all elections for the members of the House of Representatives of the Congress of the United States from the State of Georgia shall be conducted in accordance with the plan which is appended hereto as Appendices "A" and "B."

SO ORDERED, this 13th day of December, 1995.

/s/ B. Avant Edenfield
B. AVANT EDENFIELD
Chief Judge
United States District Court
Southern District of Georgia

/s/ Dudley H. Bowen, Jr.
DUDLEY H. BOWEN, JR.
United States District Court
Southern District of Georgia

EDMONDSON, Circuit Judge, dissents.

/s/ JLE

[Appendices Omitted]

APPENDIX B

[Filed Dec. 1, 1995]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

No. CV 194-008

DAVIDA JOHNSON; PAM BURKE;
HENRY ZITTROUER; GEORGE L. DELOACH;
and GEORGE SEATON, PLAINTIFFS

vs.

ZELL MILLER, in his Official Capacity as Governor of the State of Georgia; PIERRE HOWARD, in his Official Capacity as Lieutenant Governor of the State of Georgia and President of the Georgia Senate; THOMAS MURPHY, in his Official Capacity as Speaker of the Georgia House of Representatives and MAX CLELAND, in his Official Capacity as Secretary of State of the State of Georgia, DEFENDANTS

and

LUCIOUS ABRAMS, JR.; REV. G. L. AVERY; WILLIAM GARY CHAMBERS, SR.; JUDY LAMBERS; RITA VALENTI; and KAREN WATSON, INTERVENOR-DEFENDANTS

and

UNITED STATES OF AMERICA,
INTERVENOR DEFENDANT

Before EDMONDSON, Circuit Judge; EDENFIELD, Chief District Judge; and BOWEN, District Judge.

ORDER

In this expedited matter, the question presented is this one: Is Georgia's Second Congressional District unconstitutional on the ground that it violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution? The answer is "Yes."

After a trial on the merits and in light of *Miller v. Johnson*, 115 S.Ct. 2475 (1995), we find and conclude, that race, namely the intention to create a congressional district in which black persons would be a majority of the voting age population, was the overriding and predominant factor motivating the placement of the Second District's boundaries.[1] We find that the boundary line for the district was consistently drawn to keep potential black voters in the district and to keep potential white voters out of the district. The district was drawn to segregate voters according to their race; so, it is an unlawful district.

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[1] Some of the parties contended that no trial was necessary. The Department of Justice contended that, as a matter of law, the Second District was unconstitutional considering this court's earlier judgment and the Supreme Court's affirmance of that judgment. Plaintiffs contended that the pretrial record in this case entitled them to summary judgment as a matter of law. Out of an abundance of caution and given the need to move forward as conveniently and speedily as the court could, a trial was held; and the legal issues raised by the Department of Justice and the Plaintiffs on the question of whether a trial was needed were bypassed.

Findings of Fact

The facts stipulated to by all of the parties are accepted and found by the court. The court also stands by the findings of fact in its earlier decision on Georgia's Eleventh District, *Johnson v. Miller*, 864 F.Supp. 1354 (S.D. Ga. 1994);[2] those findings are pertinent to the Second District as well.

The first congressional redistricting plan submitted by Georgia to the United States Attorney General for preclearance in October 1991 contained a Second Congressional District, located in southwestern Georgia, in which blacks comprised 35.37% of the voting age population ("VAP"). The Department of Justive ("DOJ") refused preclearance of this plan. A new plan was enacted and submitted for preclearance in which the black VAP in the Second Congressional District was 45.01%. The DOJ again refused preclearance, relying on alternative plans proposing three majority-minority districts.

The critical element to making the Second Congressional District a majority-minority district was the "Macon/Savannah trade" which transferred black voters from Macon—located in the Eleventh Congressional District in the first two state plans submitted to the DOJ—to the Second Congressional District and then extending the Eleventh District into Savannah. This move converted the Second Congressional District into a majority-minority district

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[2] The record of the trial on the Eleventh District was made part of the record for the trial on the Second. At the trial of the Second District, many witnesses testified either in person or by deposition; and many documents were introduced. All the evidence has been considered, although not all of it will be specifically mentioned in this opinion.

and kept the Eleventh Congressional District a majority-minority district by offsetting the loss of black voters in Macon with the addition of black voters in Savannah. This third plan was precleared by the DOJ. As enacted, the Second Congressional District had a 52.33% black VAP.

Twelve of the Second Congressional District's thirty-five counties are split, and to draw the Second Congressional District as it is now also required the splitting of twenty-eight precincts.[8] In addition, the boundary of the Second District splits the cities of Columbus, Macon, Albany, Manchester, Roberta, Byron, Centerville, Warner Robins, Ft. Valley, Perry, Cordele, Leesburg, Moultrie, and Valdosta. Before 1992, the Second District included no portions of the city of Columbus or portions of the City of Macon. Before 1992, the Second Congressional District contained no split counties.

We find that the sole reason for splitting precincts was racial and that the predominant reason for splitting the counties and cities was racial as well.

Georgia's Second District makes use of narrow land bridges to connect parts of the district and in-

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[8] By the way, one bad side effect of the splitting of units as small as precincts for racial purposes occurs when the precinct is divided in one way for a state house seat, another way for a state senate seat, and yet a different way for a congressional seat. When this kind of gerrymandering is repeated often enough, the voting combinations that appear on some ballots are so rare—at the intersection of the state house, state senate, and congressional district lines within a precinct—that a secret ballot becomes difficult for some voters. Given the small number of ballots showing the specific combination of candidates, the persons later counting the few ballots of that kind actually cast might well know which ballot a particular voter cast.

volves a number of irregular appendages. These features affect the district's compactness adversely and, in some instances, make parts of the district only barely contiguous. We find that the predominant reason for these irregular lines is race; most can be explained on no other basis.

Linda Meggers, Director of Reapportionment Services for the Georgia General Assembly, was qualified as an expert witness. She testified that it was not feasible to create a majority-minority district in the Second Congressional District without including the black population centers in Columbus and Muscogee County, Albany and Dougherty County, and Macon and Bibb County. She further testified that, in drawing the Second Congressional District, she—we find her to have been the chief draftsperson for the District—followed the "Max-Black Plan," as espoused by the ACLU, to the same degree to which she followed it in drawing the Eleventh Congressional District. The Max-Black Plan's purpose was to maximize black voting strength in certain congressional districts by making the racial composition of those districts the overriding consideration in their design. She also said that, in terms of socio-economic interests included in the District, the Second District is one of the most diverse in Georgia. We credit Ms. Meggers' testimony.

A comparison of maps depicting the Second District's twelve split counties with maps showing the concentration of black residents in the same counties proves that the drawing of Georgia's Second Congressional District was motivated predominately by racial considerations.[4] Put differently, the line was

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[4] The portions of Bibb County placed in the Second District reflect the heavy concentration of black residents in that por-

drawn to put black voters in the Second District and to keep white voters out.

Dr. Timothy O'Rourke, Professor of Citizenship Education at the University of Missouri-St. Louis, was qualified as an expert witness. Dr. O'Rourke testified that he had been asked to examine the boundaries of the Second Congressional District in the light of the standard announced by the Supreme Court in *Miller v. Johnson* and to form an opinion about whether the Georgia Legislature had, in fact, subordinated its traditional redistricting principles to race for the Second District. He further testified that he had taken into account such matters as the one-person/one-vote standard, respect for political subdivision boundaries, compactness, contiguity, the extent to which the district includes metropolitan areas, the extent to which the district includes media markets, and socio-economic communities of interest in the region. By following a process of elimination which he explained, Dr. O'Rourke concluded that the predominant motivating factor for the configuration of

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tion of Bibb County. Pltff.Exh. 1, 13 (Joint Exh. 2, Pltf. Exh. 32). The portions of Colquitt County placed in the Second District reflect the heavy concentration of black residents in that portion of Colquitt County. Pltff.Exh. 2, 14 (Joint Exh. 9, Pltf.Exh. 38). The portions of Crisp County placed in the Second District reflect the heavy concentration of black residents in that portion of Crisp County. Pltf.Exh. 3, 15 (Joint Exh. 8, Pltf.Exh. 37). The same can be said for the remaining nine counties that are split in the Second Congressional District. Pltf.Exh. 4-12, 16-23 (Joint Exh. 3-7 and 10-13, Pltf.Exh. 33-36 and 39-42).

To alleviate confusion, we cite to both sets of exhibits—those submitted as part of Plaintiffs' motion for summary judgment and those used at trial.

the Second District was race. We credit Dr. O'Rourke's testimony.

We find that Georgia did discriminate against its black citizens in voting matters in the past.

We find no evidence that Georgia's General Assembly at the time the Second Congressional District was drawn was, in reality, seeking to eliminate the effects of past racial discrimination on black voting patterns in southwest Georgia.

We find that the General Assembly's intent at the time the Second Congressional District was drawn was to comply with the Justice Department's interpretation of the Voting Rights Act and the Department's preclearance demands.

Conclusions of Law

In defense, the State defendants ("State") stress only that the Second District differs from the unconstitutional Eleventh Congressional District because (1) the Second District has always existed in the southwestern corner of the State, (2) there is a greater community of interest in the Second District, and (3) the Second District, compared to the Eleventh District, has a lower percentage of black voters. While it is true that the Second District does differ in some respects from the Eleventh, the differences are not significant enough to make the Second District constitutional.

Nothing in the State's argument changes the fact that the General Assembly was predominantly motivated by race in its drawing of the Second Congressional District. The sections of the district's boundary that were drawn for racial reasons are substantial in terms of both distance and population affected.

The voters within the Second District may possibly have a greater community of interest than those in the Eleventh District, but it is clear the General Assembly did not draw many of the lines of the Second District because of that community of interest. Looking at the split counties and precincts, white voters left out of the district because they were white shared the same interests (for example, agriculture or military employment) as black voters who were included because they were black. That fewer black voters were purposely placed into the Second District than into the Eleventh does not change the fact that the General Assembly intentionally placed black voters into the Second and kept white voters out of the Second solely because of their race.

Because race was the overriding and predominant motivating factor in designing the Second Congressional District, the district can be upheld only if it survives strict scrutiny. *Miller*, 115 S.Ct. at 2490.

The State fails to meet its burden under the strict scrutiny analysis. The State never argued that the Second District was required by the Voting Rights Act.[5] We accept that eradicating the effects of past racial discrimination can be a significant state interest. *See Shaw v. Reno*, 113 S.Ct. 2816, 2831 (1993). But, the State has not argued persuasively that the present Second Congressional District was configured to eradicate the effects of past racial discrimination, as opposed to and apart from complying with federal

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[5] The Supreme Court has said that the Second District—the third and last majority-minority district to be created for Georgia—was not required for Section 5 preclearance and that compliance with a mistaken reading of the Voting Rights Act cannot justify race-based districting. *Miller*, 115 S.Ct. at 2491-92.

statutes. *See generally Miller*, 115 S.Ct. at 2490 (not every state action to comply with DOJ's view of Voting Rights Act is, in itself, step by state to eradicate effect of past racial discrimination for purposes of strict scrutiny). No evidence exists in the record that the General Assembly at the time the Second District was drawn was seeking, in reality, to eliminate the effects of past racial discrimination on black voting patterns in southwest Georgia. *Cf. City of Richmond v. J.A. Croson Co.*, 109 S.Ct. 706, 719-721 (1989) (discussing need for government to demonstrate specific need and justification for favoring racial group).

We conclude and declare that Georgia's Second Congressional District is unconstitutional in its current composition. Defendants are hereby barred from using it in future Congressional elections.

IT IS SO ORDERED.

FOR THE THREE-JUDGE COURT:

/s/ J. L. Edmondson
United States Circuit Judge

APPENDIX C

[Filed July 26, 1994]

STATEMENT OF JUDICIAL NOTICE

Evidence of former discriminatory practices against black people in the State of Georgia need not be presented for purposes of this case. Racial discrimination has been an unfortunate reality in the state's history. No one can deny that state and local governments of Georgia in the past utilized widespread, pervasive practices to segregate the races which had the effect of repressing black citizens, individually and as a group.

In the past in Georgia, like in so many other states of the Union, racial segregation was government policy and a way of life. By law, public schools and public housing were segregated according to race. Public recreational facilities were segregated. Miscegenation was prohibited. Ordinances required segregation in public transportation, restaurants, hotels, restrooms, theaters, and other such facilities, even drinking fountains.

More indirectly, the government often treated black citizens differently from white citizens. Public services were allocated along racial lines. To find roads in white neighborhoods paved but roads in black neighborhoods unpaved was common. In public employment, black workers were often paid less than white workers for the same job. In addition, methods of jury selection were developed to exclude black people from jury service.

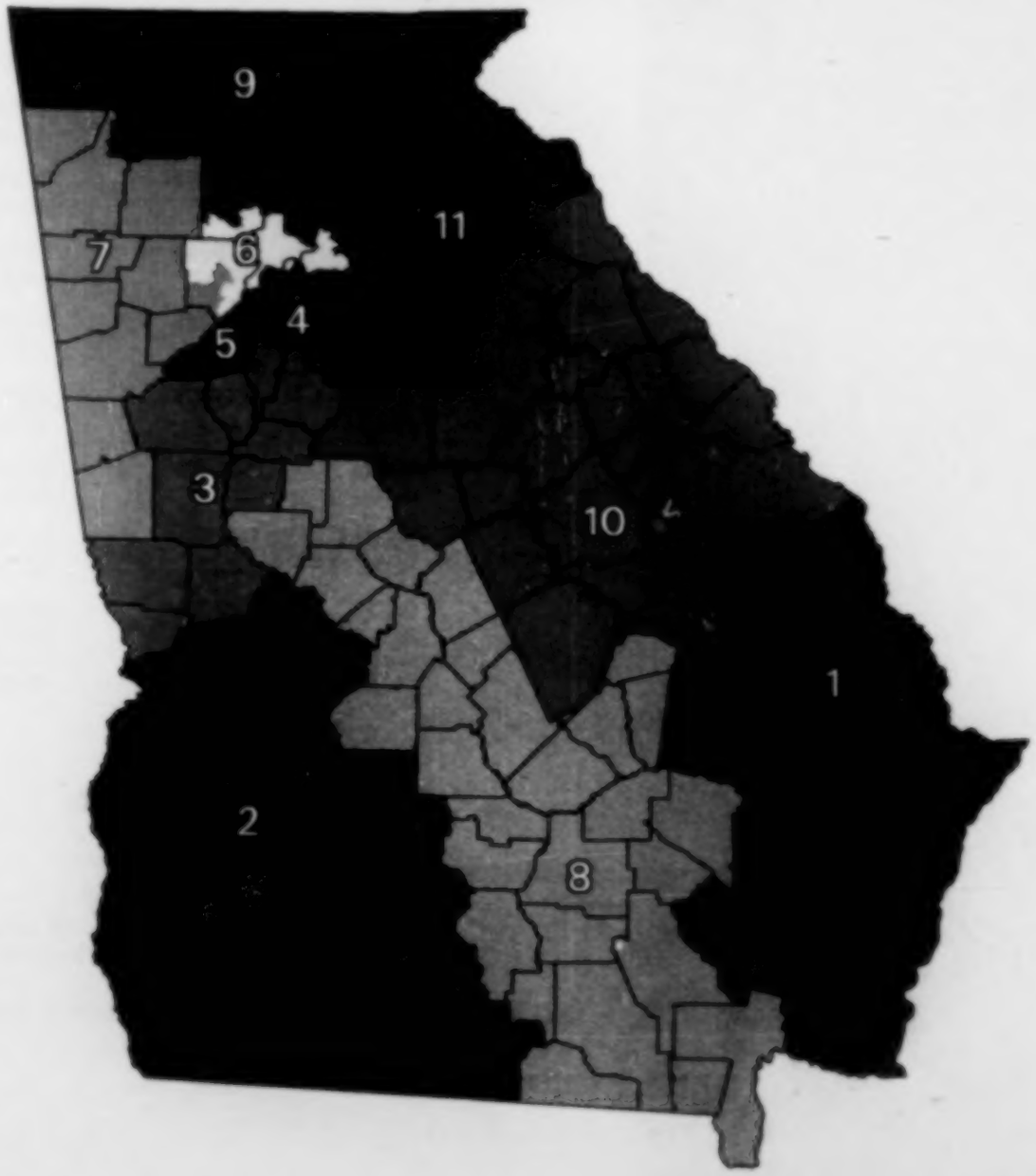
Georgia's history on voting rights includes discrimination against black citizens. From the state's first Constitution—which barred blacks from voting alto-

gether—through recent times, the state has employed various means of destroying or diluting black voting strength. For example, literacy tests (enacted as late as 1958) and property requirements were early means of excluding large numbers of blacks from the voting process. Also, white primaries unconstitutionally prevented blacks from voting in primary elections at the state and county level.

Even after black citizens were provided access to voting, the state used various means to minimize their voting power. For example, until 1962 the county unit system was used to undermine the voting strength of counties with large black populations. Congressional districts have been drawn in the past to discriminate against black citizens by minimizing their voting potential. State plans discriminated by packing an excessive number of black citizens into a single district or splitting large and contiguous groups of black citizens between multiple districts.

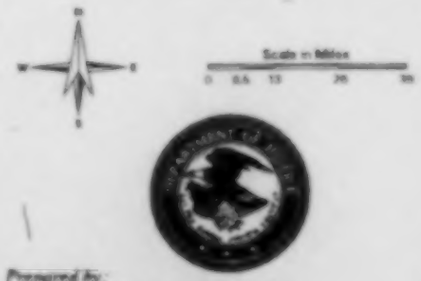
Never do we imply that a history of invidious racial discrimination is unique to Georgia. Our judicial notice is confined to Georgia because this case is about Georgia, and Georgia is a covered jurisdiction under the Voting Rights Act. Our notice is intended to set out the historical facts, not to insult a state or people who have made great and difficult strides towards equality during the last thirty years and who could be mentioned for many good, kind, and brave things unrelated to this case.

Court Plan
1995



Library: Georgia

Plan: LIT16620124FEDCT



Prepared by:
United States Department of Justice
Washington, D.C., 20530

February 23, 1996

NOTE: VAP = Voting Age Population

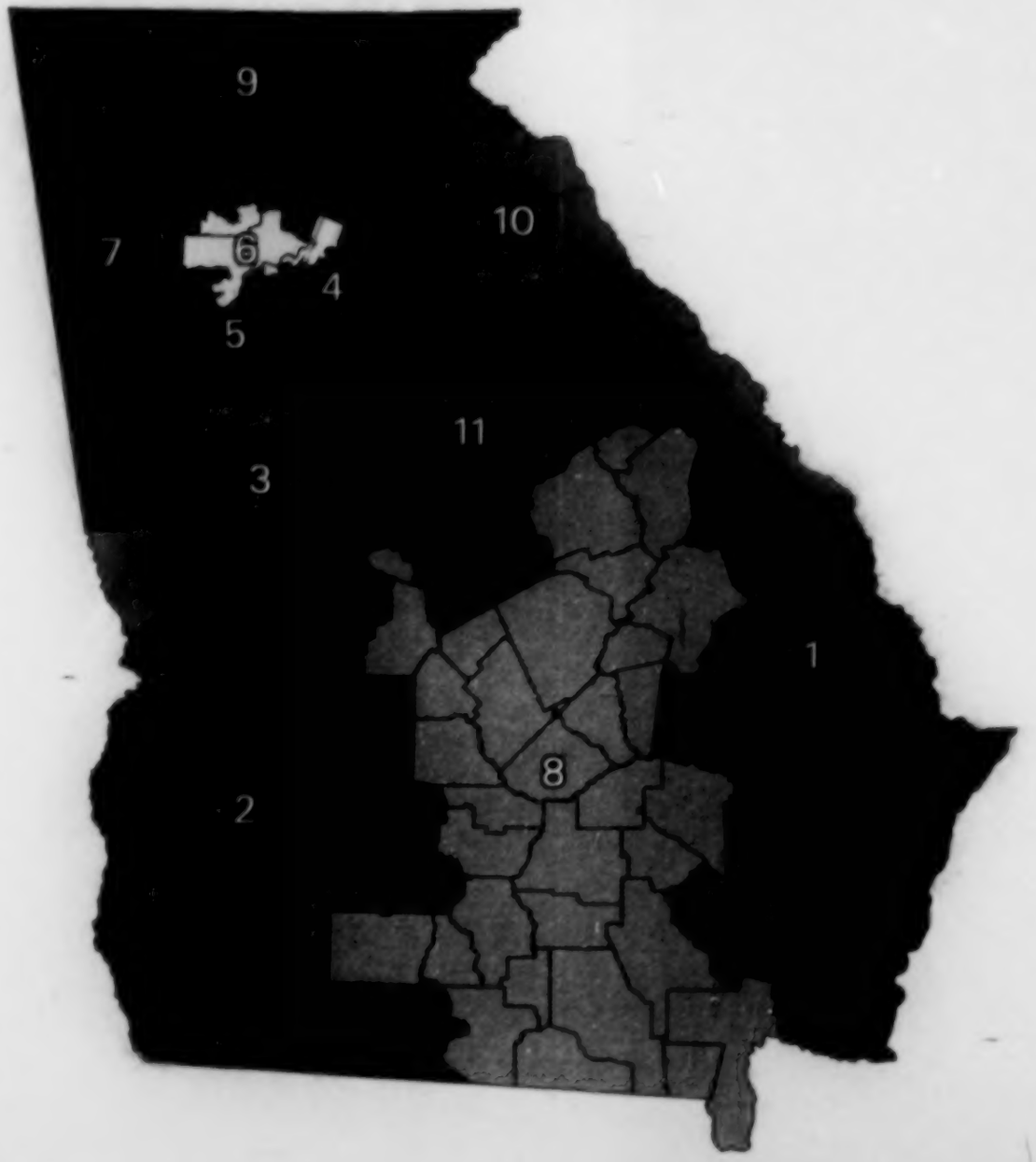
District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
1	588541 −0.07	179809 30.55	426558 72.48	118631 27.81
2	587583 −0.23	230419 39.21	415407 70.70	145948 35.13
3	589630 0.12	145377 24.66	424974 72.07	95713 22.52
4	589322 0.07	215700 36.60	450500 76.44	147784 32.80
5	589359 0.07	365330 61.99	442885 75.15	253212 57.17
6	589600 0.11	37597 6.38	440475 74.71	27122 6.16
7	589405 0.08	77871 13.21	432683 73.41	51911 12.00
8	587912 −0.17	182636 31.07	425122 72.31	120107 28.25
9	589420 0.08	21520 3.65	439083 74.49	15164 3.45
10	588046 −0.15	220803 37.55	423299 71.98	145950 34.48
11	589398 0.08	69503 11.79	429927 72.94	46600 10.84
Totals	6478216	1746565	4750913	1168142

Number of Districts		:	11
Members Per District		:	1
Ideal District Size		:	588929
Average Deviation	(%)	:	0.11
Deviation Range	(%)	:	−0.23 to 0.12
Overall Deviation	(%)	:	0.35

DATA SOURCE: 1990 US Census PL94-171 Population Counts

NOTE: Districts numbered > 200 are used as special accumulators.
They are not included in avg or % range calculations.

Illustrative Plan



Library: Georgia

Plan: GAPLANA

DISTRICTS

1
2
3
4
5
6
7
8
9
10
11

County Boundaries

Scale in Miles

0 5 10 20 30

Prepared by:
United States Department of Justice
Washington, D.C., 20530

February 20, 1996

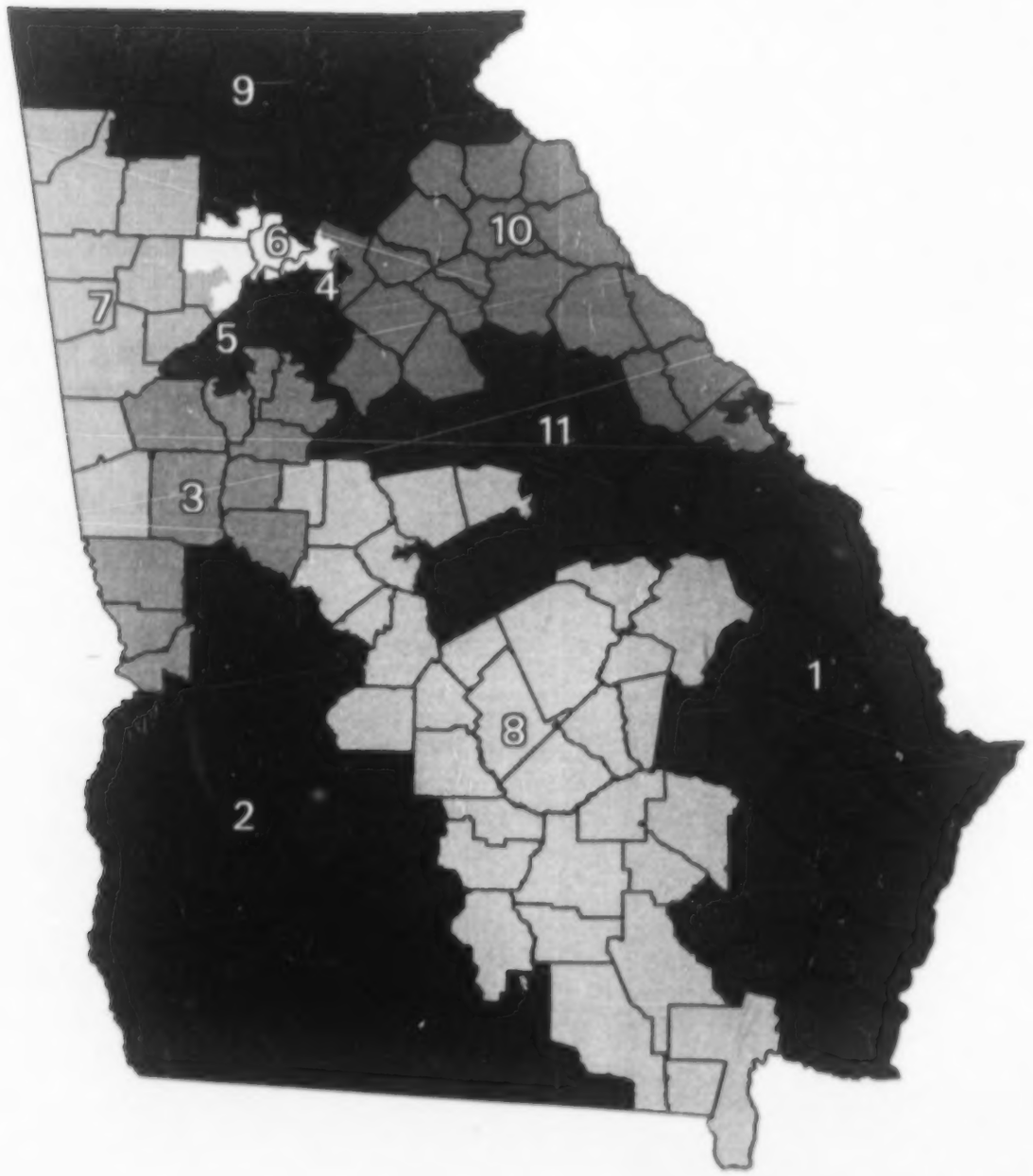
Plan: GAPLANA

Population Summary Report

Dist	:	Total Deviation		Dev %	Black %	Black 18 + %
1	:	588541	−387	−0.07	30.55	27.81
2	:	588995	67	0.01	46.10	42.03
3	:	589121	193	0.03	18.48	16.92
4	:	588567	−361	−0.06	10.21	9.54
5	:	588398	−530	−0.09	58.21	53.70
6	:	588680	−248	−0.04	6.48	6.23
7	:	589443	515	0.09	13.32	12.12
8	:	589202	274	0.05	27.95	24.88
9	:	589420	492	0.08	3.65	3.45
10	:	589476	548	0.09	27.10	24.47
11	:	588367	−561	−0.10	54.60	51.04

Total Population	:	6478210
Ideal Population	:	588928
Mean Deviation is	:	0
Mean Percent Deviation is	:	0
Largest Positive Deviation is	:	548
Largest Negative Deviation is	:	−561
Overall Range in Deviation is	:	1109
Overall Range in Deviation % is	:	0.19

1991 Plan



Library: Georgia

Plan: S913556NEW

Prepared by:
United States Department of Justice
Washington, D.C., 20530

February 27, 1998

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

No. CV 194-008

DAVIDA JOHNSON, ET AL., PLAINTIFFS

v.

ZELL MILLER, ET AL., DEFENDANTS

and

UNITED STATES OF AMERICA,
DEFENDANT-INTERVENOR

and

LUCIOUS ABRAMS, JR., ET AL.,
DEFENDANT-INTERVENORS

UNITED STATES' NOTICE OF APPEAL FROM DECEMBER 13, 1995 ORDER

Pursuant to 28 U.S.C. §§ 1253 and 2101, the United States hereby appeals to the Supreme Court of the United States from this Court's order of December 13, 1995 adopting a remedial congressional redistricting plan for the State of Georgia and ordering that henceforth all elections for the House of Representatives of the Congress of the United States be conducted in accordance with that plan.

Respectfully submitted,

HARRY D. DIXON, JR.
United States Attorney

DEVAL L .PATRICK
Assistant Attorney General

/s/ Daniel H. Claman
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